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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHELLEY ALLISON,

Plaintiff,

v.

XAVIER SHABAZZ, ET AL.,

Defendants.

No. C 14-04813 JSW

**ORDER RE MOTIONS TO DISMISS
SECOND AMENDED COMPLAINT
AND MOTION TO APPOINT GUARDIAN**

Now before the Court are several motions: (1) Plaintiff Shelley Allison (“Plaintiff”)’s motion for appointment of Connie Valentine as guardian *ad litem* for her two minor children; (2) the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) filed by Defendants Xavier Shabazz, Emily Amott, Donald Patchin, and Contra Costa County (“County Defendants”); and, (3) the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) filed by Defendants Judicial Council, Contra Costa County Superior Court, and the State of California (“State Defendants”). Having carefully reviewed the parties’ papers, relevant legal authority, and the record in this case, the Court hereby GRANTS Defendants’ motions to dismiss without leave to amend and finds as moot Plaintiff’s application for appointment of guardian *ad litem*.

The Court has previously permitted amendment of the complaint to address the arguments in the County Defendants’ motion to dismiss the First Amended Complaint on many of the same grounds present in their current motion. Having allowed for three amendments of the complaint and having outlined the specific concerns the Court had with Plaintiff’s theory of the case, the Court now

1 finds the matter should be dismissed without leave to amend.

2 **BACKGROUND**

3 This case arises from a family law action in Superior Court of Contra Costa County. In that
4 action, on August 10, 2011, Plaintiff's ex-husband and father of her two minor daughters was
5 granted sole legal and physical custody of the children, despite Plaintiff's contentions that he had
6 physically and sexually abused the children. Plaintiff brings this action in federal court alleging that
7 various parties conspired to deprive her custody of her two children.

8 On October 29, 2014, Plaintiff, on behalf of herself and as guardian for her two minor
9 daughters, filed a complaint in this Court alleging seven self-styled causes of action for: (1)
10 conspiracy to deny access to court, to family rights, to bodily and emotional integrity, and to equal
11 protection - based on status of female protective parent and abused children - 42 U.S.C. § 1983 -
12 First Amendment and Fourteenth Amendment - Due Process and Equal Protection Clauses - applies
13 to Plaintiff, her children, and to Shabazz, Amott, Patchin, Doe 1 - unnamed Contra Costa Child
14 Protective Services worker, and Does 2-10; (2) conspiracy to injury rights of party in state court, 42
15 U.S.C. § 1985(2) - state clause - denial of equal protection and denial of family rights and
16 companionship - applies to Shabazz and Lawrence and Does 2-10; (3) conspiracy to deprive
17 Plaintiff and her children of equal protection of the law and hinder authorities from providing equal
18 protection of the laws, 42 U.S.C. § 1985(3) - applies to Defendants Shabazz, Lawrence, Amott, and
19 Patchin, Doe 1, Does 2-10; (4) *Monell* violation - applies to Defendant; (5) Bane Act, California
20 Civil Code § 52.1 - interference with exercise of federal civil rights under First and Fourteenth
21 Amendments - applies to Plaintiff and her children and to Defendants Lawrence and Adair; (6)
22 negligence per se - applies to Allison and her two daughters and to Defendants Shabazz, Amott,
23 Patchin, Doe 1, and Does 2-10.

24 On January 21, 2015, Plaintiff filed an *ex parte* application for appointment of guardian *ad*
25 *litem*.

26 On April 17, 2015, the County Defendants filed a motion to dismiss and on May 8, 2015,
27 attorney Lawrence filed a motion to dismiss. Both motions were set for hearing on June 19, 2015.
28 Plaintiff failed to oppose either motion and instead filed a First Amended Complaint on June 9,

1 2015. Lawrence filed objections to the late filing of an amended complaint.

2 In her First Amended Complaint, Plaintiff, again on her own behalf and as guardian for her
3 two minor daughters, alleged six self-styled causes of action for: (1) conspiracy to deny access to
4 court, to family rights, to bodily and emotional integrity, and to equal protection - based on status of
5 female protective parent and abused children - 42 U.S.C. Section 1983 - First Amendment and
6 Fourteenth Amendment - Due Process and Equal Protection Clauses - applies to Plaintiff, her
7 children, and to Shabazz, Amott, Patchin, Doe 1 - unnamed unknown Contra Costa Child Protective
8 Services worker, and Does 2-10; (2) conspiracy to injure party in state court - 42 U.S.C. Section
9 1985(2) - state clause - denial of equal protection and denial of family rights and companionship -
10 applies to Plaintiff and the daughters and to Shabazz and Lawrence and Does 2-10; (3) conspiracy to
11 deprive Plaintiff and her children of equal protection of the law and to hinder authorities from
12 providing equal protection of the laws, 42 U.S.C. Section 1985(3) - applies to Plaintiff and the
13 daughters and to Defendants Shabazz, Lawrence, Amott, and Patchin, Doe1, Does 2-10; (4) *Monell*
14 violation - applies to Plaintiff and the daughters and to County; (5) negligence per se - applies to
15 Allison and her two daughters and to Defendants Shabazz, Amott, Patchin, Doe 1, and Does 2-10;
16 and (6) gender discrimination by recipients of federal funds - declaratory and injunctive relief and
17 damages - applies to Judicial Council, County, Court and California - Violence Against Women
18 Reauthorization (“VAWA”), 42 U.S.C. Section 12395(b); Juvenile Justice Act, 42 U.S.C. Section
19 5501, *et seq.*

20 On June 26, 2015, this Court granted County Defendants’ motion to dismiss with leave to
21 amend and Lawrence’s motion to dismiss without leave.¹ The Court also denied Plaintiff’s
22 application to appoint herself as the guardian *ad litem* for her two minor children. Having found her
23 First Amended Complaint did not adequately address the legal defects of her original pleading, the
24 Court granted Plaintiff leave to file a second amended complaint addressing the specific concerns
25 outlined in the Court’s order.

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¹ Although the Second Amended Complaint still makes mention of Defendant Judith Lawrence, she has been dismissed from the lawsuit, without leave to amend. (*See, e.g.,* Second Amended Complaint, Third Cause of Action.)

1 In her Second Amended Complaint, Plaintiff, again on her own behalf and on behalf of her
2 two minor daughters, alleges six self-styled causes of action for: (1) conspiracy to deny access to
3 court, to family rights, to bodily and emotional integrity, to equal protection - based on status of
4 female protective parent and abused children - 42 U.S.C. section 1983 - First Amendment and
5 Fourteenth Amendment - Due Process and Equal Protection Clauses; (2) conspiracy to injure rights
6 of party in state court, 42 U.S.C. section 1985(2) state clause - denial of equal protection; (3)
7 conspiracy to deprive plaintiff and her children of equal protection of the law and to hinder
8 authorities from providing equal protection of the laws. 42 U.S.C. sec. 1985(3); (4) *Monell* violation;
9 (5) negligence per se: failure to carry out mandatory statutory duties; and (6) gender discrimination
10 by recipients and disbursers of federal funds.

11 On October 28, 2015, Plaintiff filed an application to appoint Connie Valentine as guardian
12 *ad litem* for her minor children.

13 The Court shall address additional facts in the remainder of the order.

14 ANALYSIS

15 A. Applicable Legal Standard on Motion to Dismiss.

16 When a defendant moves to dismiss a complaint or claim for lack of subject matter
17 jurisdiction, the plaintiff bears the burden of proving that the court has jurisdiction to decide the
18 claim. *Thornhill Publ'n Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). A
19 motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) may be “facial or
20 factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). A facial attack on
21 the jurisdiction occurs when factual allegations of the complaint are taken as true. *Fed'n of African*
22 *Am. Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir. 1996). The plaintiff is then
23 entitled to have those facts construed in the light most favorable to him or her. *Id.*

24 A factual attack on subject matter jurisdiction occurs when defendants challenge the actual
25 lack of jurisdiction with affidavits or other evidence. *Thornhill*, 594 F.2d at 733. In a factual attack,
26 plaintiff is not entitled to any presumptions or truthfulness with respect to the allegations in the
27 complaint, and instead must present evidence to establish subject matter jurisdiction. *Id.*

28 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the

1 complaint fails to state a claim upon which relief can be granted. The Court’s “inquiry is limited to
2 the allegations in the complaint, which are accepted as true and construed in the light most favorable
3 to the plaintiff.” *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Even under the
4 liberal pleadings standard of Federal Rule of Civil Procedure 8(a)(2), “a plaintiff’s obligation to
5 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a
6 formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v.*
7 *Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

8 Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but must
9 allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. “A claim has
10 facial plausibility when the Plaintiff pleads factual content that allows the court to draw the
11 reasonable inference that the Defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556
12 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). If the allegations are insufficient to state a
13 claim, a court should grant leave to amend, unless amendment would be futile. *See, e.g. Reddy v.*
14 *Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Lieche, Inc. v. N. Cal.*
15 *Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

16 As a general rule, “a district court may not consider material beyond the pleadings in ruling
17 on a Rule 12(b)(6) motion.” *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on other*
18 *grounds, Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (citation omitted).
19 However, documents subject to judicial notice may be considered on a motion to dismiss. In doing
20 so, the Court does not convert a motion to dismiss to one for summary judgment. *See Mack v. South*
21 *Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed.*
22 *Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104 (1991).

23 **B. Application for Appointment of Guardian Ad Litem.**

24 A minor or an incompetent person who does not have a duly appointed representative may
25 sue by a next friend or by a guardian *ad litem*. “The court must appoint a guardian *ad litem* – or
26 issue another appropriate order – to protect a minor or incompetent person who is unrepresented in
27 an action.” Fed. R. Civ. P. 17(c)(2).

28 State law should be applied to determine capacity to sue. In California, a minor must be

1 represented by a guardian *ad litem* in court proceedings. Cal. Code Civ. Proc. § 372(a). If the minor
2 is a plaintiff in a cause of action then a guardian *ad litem* must be appointed before issuance of the
3 summons. Cal. Code Civ. Proc. § 373(a).

4 “A court has broad discretion in ruling on a guardian *ad litem* application.” *Williams v.*
5 *Superior Court of San Diego*, 147 Cal. App. 4th 36, 47 (2007) (citing *In re Emily R.*, 80 Cal. App.
6 4th 1344, 1356 (2000)). When there is no conflict of interest, the guardian *ad litem* appointment is
7 usually made on *ex parte* application and involves minimal exercise of discretion by the trial court.
8 *In re Marriage of Caballero*, 27 Cal. App. 4th 1139, 1149 (1994).

9 The guardian *ad litem*’s main focus is the best interests of the minor. *Briggs v. Briggs*, 160
10 Cal. App. 2d 312, 319 (1958). The guardian *ad litem* is an officer of the court with the right to
11 control the minor’s litigation. *De Los Santos v. Superior Court of Los Angeles*, 27 Cal. 3d 677, 683-
12 84 (1980). “The guardian *ad litem*’s role is more than an attorney’s but less than a party’s.” *In re*
13 *Josiah Z.*, 36 Cal. 4th 664, 678 (2005). When choosing a guardian *ad litem* for a civil lawsuit, the
14 most important issue is protection of the minor’s interest in the litigation. *Williams*, 147 Cal. App.
15 4th at 47.

16 The Court previously denied Plaintiff’s application to be the children’s guardian on the basis
17 that Plaintiff’s interest and the children’s interest may diverge. Absent a legal guardian, the two
18 minor children lack capacity to sue. If no guardian *ad litem* is appointed, the claims on their behalf
19 must be dismissed. *See* Cal. Code Civ. Proc. § 373(a). In more recent filings, Plaintiff seeks the
20 appointment of Connie Valentine as the children’s guardian. Valentine is “a co-founder of
21 California Protective Parent Association, a non-profit organization dedicated to assisting non
22 offending parent and their abused children in family court through education, research and
23 advocacy.” (Declaration of Connie Valentine ¶ 6.)

24 Although the Court is concerned that Valentine may have the Plaintiff’s but not necessarily
25 the children’s best interest in mind, because the Court finds that the substance of the third iteration
26 of the claims do not survive the pending motions to dismiss, the Court need not rule on the
27 application for guardian *ad litem*.

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1 **C. Contra Costa County’s Motion to Dismiss.**

2 **1. Rooker-Feldman Doctrine Bars Claims.**

3 Once again, the Court finds that Plaintiff’s claims are barred under the *Rooker-Feldman*
4 doctrine, which provides that district courts lack jurisdiction to review the final determinations of a
5 state court in judicial proceedings. *See, e.g., District of Columbia Court of Appeals v. Feldman*, 460
6 U.S. 462, 487-87 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415 (1923); *Branson v. Nott*,
7 62 F.3d 287, 291 (9th Cir. 1995). “The purpose of the doctrine is to protect state judgments from
8 collateral federal attack. Because district courts lack power to hear direct appeals from state court
9 decisions, they must decline jurisdiction whenever they are ‘in essence called upon to review the
10 state court decision.’” *Doe & Associates Law Offices v. Napolitano*, 252 F.3d 1026, 1030 (9th Cir.
11 2001) (quoting *Feldman*, 460 U.S. at 482 n.16). In addition, where “the district court must hold that
12 the state court was wrong in order to find in favor of the plaintiff, the issues presented are
13 inextricably intertwined.” *Id.* (citations omitted). “If constitutional claims presented to a United
14 States District Court are inextricably intertwined with the state court’s denial in a judicial
15 proceeding of a particular plaintiff’s application [for relief], then the District Court is in essence
16 being called upon to review the state court decision. This the District Court may not do.” *Bianchi v.*
17 *Rylaarsdam*, 334 F.3d 895, 898 (9th Cir. 2003) (citations omitted).

18 Notwithstanding Plaintiff’s assertions to the contrary, the facts set forth in support of her
19 claims and the relief she seeks demonstrate that the issues are inextricably intertwined with state
20 court decision regarding custody. In effect, Plaintiff seeks review and reversal of the state court
21 decision.

22 Although the Court believes it lacks jurisdiction, however, it recognizes the Ninth Circuit has
23 narrowly construed the *Rooker-Feldman* doctrine. Even if the Court were to have jurisdiction over
24 Plaintiff’s claims, it would still dismiss the second amended complaint for failure to state a claim
25 upon which relief may be granted.

26 **2. Statute of Limitations Bars Constitutional Claims.**

27 The County Defendants contend that the statute of limitations bars Plaintiff’s claims for
28 violations of the Constitution. A claim under Section 1983 must be brought within two years after

1 the cause of action accrued, *i.e.* when Plaintiff knew or had reason to know of the alleged injury that
2 forms the basis of the claim. *See Canatella v. Van De Kamp*, 486 F.3d 1128, 1132-33 (9th Cir.
3 2007). The state court decision following the custody trial is dated August 10, 2011 and the current
4 lawsuit was originally filed October 29, 2014. Accordingly, the passing of the statute of limitations
5 would bar the claim.

6 Plaintiff argues that the statute of limitations should be tolled until discovery of the claims
7 because she was denied access to several reports until December 2013 that may have changed the
8 outcome of the state court proceeding. In her amended complaint, Plaintiff alludes to material
9 discovered in March 2014. (*See Second Amended Complaint* ¶¶ 74, 134.) Specifically, Plaintiff
10 alleges that despite efforts to gather materials at the time, she was only able to discover that Shabazz
11 allegedly ordered deputies not to interview her ex-husband about the allegations of abuse. However,
12 the Court finds that the amended complaint fails to allege sufficient facts to permit application of the
13 discovery rule to suspend application of the statute of limitations for Plaintiff's constitutional claims.
14 It is clear from the record that Plaintiff felt she had sufficient information to file and, in fact in
15 September 2011, Plaintiff did file a citizen complaint against Shabazz alleging that he lied and did
16 not follow proper procedures during his investigation. (*See Request for Judicial Notice*, Ex. D at 3.)
17 Accordingly, because Plaintiff had suspicion of the wrongdoing she alleged, the limitations period
18 had begun. *See Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1110-11 (1988) (holding that the
19 limitations period "begins once the plaintiff has notice or information of circumstances to put a
20 reasonable person on inquiry. . . . A plaintiff need not be aware of the specific 'facts' necessary to
21 establish the claim; that is a process contemplated by pretrial discovery. Once the plaintiff has a
22 suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit
23 on her rights. So long as suspicion exists, it is clear that the plaintiff must go find the facts; she
24 cannot wait for the facts to find her.")

25 Plaintiff's contentions to the contrary, that she attempted to retrieve the relevant records and
26 was stymied, does not change the Court's conclusion that she was on inquiry notice of the basis of
27 her allegations. Accordingly, the Court does not toll the statute of limitations based on the discovery
28 rule and finds Plaintiff's claims are time-barred. However, notwithstanding the fact that the claims

1 are barred by both the *Rooker-Feldman* doctrine and the passing of the statute of limitations, the
2 Court addresses the merits of the claims.

3 **3. Failure to State a Claim for Violation of Section 1983.**

4 Plaintiff alleges that the County Defendants violated her rights under the First and Fourteenth
5 Amendments to the United States Constitution in violation of 42 U.S.C. Section 1983 (“Section
6 1983”). Section 1983 “provides a cause of action for the ‘deprivation of any rights,
7 privileges, or immunities secured by the Constitution and laws’ of the United States.” *Wilder v.*
8 *Virginia Hosp. Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). In order to prevail on
9 her Section 1983 action, Plaintiff must show that (1) Defendants acted under color of state law and
10 (2) Defendants deprived her of a right secured by the Constitution. *Adickes v. S.H. Kress & Co.*, 398
11 U.S. 144, 150 (1970).

12 Plaintiff alleges that the County Defendants violated her own and her children’s rights to
13 access to the courts guaranteed by the First and the Fourteenth Amendments. However, according to
14 the allegations in the original and amended complaints, Plaintiff was not deprived an opportunity to
15 litigate her case. Rather, Plaintiff had a full trial before the state court judge and a trial on the merits
16 before the family court. To the extent Plaintiff contends the court process was unfair, the Court
17 addresses such claims as violations of the rights to equal protection and due process.

18 In general, in order to state an equal protection violation, a plaintiff must allege (1)
19 discrimination on account of his or her membership in a distinct group or class (2) by the State.
20 *Engquist v. Oregon Department of Agriculture*, 553 U.S. 591, 607 (2008). Plaintiff also must allege
21 that the state actor acted with an intent or purpose to discriminate against her based upon her
22 membership in a protected class. *See Lee v. City of Los Angeles*, 250 F.3d 668, 686 (9th Cir. 2001),
23 *overruled on other grounds, Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1125-26 (9th Cir.
24 2002). In this regard, Plaintiff claims that as a female protective parent or her children as alleged
25 victims of domestic violence, Plaintiffs fall within a protected class. However, female protective
26 parents are not considered a protected class. *See, e.g., Borlawsky v. Town of Windham*, 115 F. Supp.
27 2d 27, 29 (D. Maine 2000) (holding that divorced or otherwise single parents are not a protected
28 class); *see also Fox v. County of Tulare*, 2014 WL 3687735, at *13 (E.D. Cal. July 24, 2014)

1 (holding that classification of a single parent of either gender in a custody dispute does not qualify
2 the parent as a member of a protected class). Alleged victims of domestic violence are similarly not
3 recognized as a protected class for constitutional analysis. *See Fotinos v. Fotinos*, 2013 WL
4 1195644, at *4 (N.D. Cal. March 22, 2013). Thus, Plaintiff’s allegations are insufficient to state a
5 claim for a violation of equal protection, for herself or on behalf on her children.

6 Plaintiff also alleges that the County Defendants violated her due process rights. Procedural
7 due process provides “a guarantee of fair procedure in connection with any deprivation of life,
8 liberty, or property” by the government. *Collins v. City of Harker Heights*, 503 U.S. 115, 125
9 (1992). “A section 1983 claim based upon procedural due process . . . has three elements: (1) a
10 liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the
11 government; (3) lack of process.” *Portman v. County of Santa Clara*, 995 F.2d 898, 904 (9th Cir.
12 1993).

13 The Court finds that Plaintiff has again, in the third iteration of her complaint, failed to allege
14 sufficient facts demonstrating that Defendants violated her due process rights. Although the Court
15 instructed Plaintiff to be clear whether she intends to assert a procedural due process claim or a
16 substantive due process claim, it is still unclear what liberty or property interest which she alleges
17 she was deprived and what specific process she alleges that she did not receive. The state court
18 heard the family custody matter and considered the testimony of witnesses, the arguments of the
19 parties, and the content of relevant documents. (RJN, Ex. A.) Plaintiff was afforded sufficient
20 notice and an opportunity to be heard. There are insufficient facts alleged in the complaint and
21 based on the noticeable record in this matter to find that Plaintiff has established a claim for
22 violation of procedural due process.

23 **4. Failure to State a Claim for Conspiracy Pursuant to Section 1985.**

24 The Court also dismisses the claims under Sections 1985. Plaintiff asserts claims under
25 Section 1985(2) and Section 1985(3). “Section 1985(2) consists of two parts: the first proscribes
26 conspiracies to interfere with the administration of justice in federal courts; the second applies to
27 conspiracies to obstruct the course of justice in state courts.” *Dooley v. Reiss*, 736 F.2d 1392, 1395
28 (9th Cir. 1984).

1 To the extent Plaintiff attempts to state a claim under the second part of Section 1985(2), she
2 fails to allege facts that show she was denied access to state courts because she or her daughters
3 were members of a protected class. *See Portman v. County of Santa Clara*, 995 F.2d 998, 909 (9th
4 Cir. 1993); *see also Phillips v. International Ass’n of Bridge Workers, Local 118*, 556 F.2d 939, 941
5 (9th Cir. 1977) (“A cognizable claim under this statute requires an allegation of a class-based
6 invidiously discriminatory animus.”). Plaintiff has made no allegations suggesting that any
7 conspiracy, assuming one existed, was motivated by animus against female protective parents or
8 victims of domestic violence. *See Portman*, 995 F.2d at 909 (holding that a plaintiff did not state a
9 claim pursuant to Section 1985(2) because he failed to allege “that the County denied him access to
10 state courts because he was a member of a protected class.”); *see also Bagley v. CMC Real Estate*
11 *Corp.*, 923 F.2d 758, 763 (9th Cir. 1991) (holding that court properly rejected Section 1985(2) claim
12 because the plaintiff “failed to assert his membership in a protected class or any denial of equal
13 protection”). Plaintiff fails to allege that victims of domestic violence constitute a protected class.
14 Rather, the amended complaint appears to contest the state court decision which, Plaintiff claims,
15 operated to deprive Plaintiff from maintaining custody of her two minor daughters.

16 For the same reasons, Plaintiff also fails to allege facts sufficient to state a claim under
17 Section 1985(3). *See Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992) (a plaintiff
18 must allege that the deprivation of the right in question was “motivated by ‘some racial, or perhaps
19 otherwise class-based, invidiously discriminatory animus behind the conspirators’ action”); *see also*
20 *McCalden v. California Library Ass’n*, 955 F.2d 1214, 1223 (9th Cir. 1992) (“the plaintiff must be
21 a member of a class that requires special federal assistance in protecting its civil rights”) (quoting
22 *Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1519 (9th Cir. 1987)).

23 Having failed to adduce facts tending to demonstrate that the County Defendants acted out of
24 animus against her and her children by virtue of their membership in a recognized protected class,
25 the Court must dismiss these claims.

26 **5. Failure to State a Claim Under *Monell*.**

27 The County Defendants move to dismiss Plaintiff’s *Monell* claim against them for failure to
28 allege facts sufficient to demonstrate the existence of an official policy or custom constituting a

1 moving force behind any purported constitutional violations.

2 Municipal liability can be imposed only for injuries inflicted pursuant to an official
3 governmental policy or custom. *See Monell v. N.Y. Dept. of Soc. Serv.*, 436 U.S. 658, 690-94
4 (1978). A county can be found liable when the execution of a county policy, whether made by its
5 lawmakers or those whose acts can be said to represent official policy or custom of the county,
6 inflicts the injury. *Id.* at 694. In order to assert a *Monell* claim, a plaintiff must plead and prove
7 facts sufficient to demonstrate: “(1) whether plaintiff’s harm was caused by a constitutional
8 violation; and (2) if so, whether the [municipality] is responsible for that violation.” *Collins v. City*
9 *Harker Heights*, 503 U.S. 115, 120 (1992). More specifically, to establish municipal liability, a
10 plaintiff must demonstrate that: (1) the plaintiff possessed a constitutional right of which he was
11 deprived; (2) the municipality had a policy; (3) this policy amounted to a deliberate indifference to
12 the plaintiff’s constitutional rights; and (4) the policy was the moving force behind the constitutional
13 violation. *Van Ort v. Estate of Michael Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996).

14 Here, the County Defendants contend that there can be no *Monell* liability because Plaintiff
15 has failed to demonstrate that there was an underlying constitutional deprivation. Because, based
16 upon the allegations in the second amended complaint, the Court finds Plaintiff has failed to set out a
17 constitutional claim, there is no basis for a finding of municipal liability pursuant to *Monell* and the
18 claim is therefore dismissed.

19 **6. Failure to State a Claim for Negligence Per Se.**

20 Plaintiff has asserted a negligence per se claim based on the contention that the individual
21 County Defendants breached a mandatory duty under California Penal Code section 11166 to
22 investigate child abuse allegations. (SAC ¶ 199.) To state a claim for negligence per se, Plaintiff
23 must allege fact establishing that: (1) defendants violated a statute, ordinance, or regulation; (2) the
24 violation caused the plaintiff’s injury; (3) the injury resulted from the kind of occurrence the statute,
25 ordinance, or regulation was designed to prevent; and (4) plaintiff was a member of the class of
26 persons the statute, ordinance, or regulation was intended to protect. *See* Cal. Evid. Code § 669(a).

27 Although Plaintiff does not fall within the class of persons the statute was intended to protect
28 here, the children do fall within that class. However, pursuant to California Government Code

1 section 821.6, the individual County Defendants are granted immunity from suit for claims for
2 negligent investigations into alleged criminal conduct. *See* Cal. Gov. Code § 821.6 (“A public
3 employee is not liable for injury caused by his instituting or prosecuting any judicial or
4 administrative proceeding within the scope of his employment, even if he acts maliciously and
5 without probable cause.”); *see also Amylou v. County of Riverside*, 28 Cal. App. 4th 1205, 1209-10
6 (1994) (holding that Section 821.6 serves to bar claims for negligent investigation in addition to
7 malicious prosecution). Accordingly, the claim for negligence per se fails as against County
8 Defendants as a matter of law and the motion to dismiss the claim is granted.

9 **7. Failure to State a Claim for Gender Discrimination Claim by Recipient of**
10 **Federal Funds.**

11 Plaintiff’s final cause of action for gender discrimination by a recipient of federal funds fails
12 as a matter of law. Plaintiff attempts to assert a claim pursuant to 42 U.S.C. section 2000d-7 which
13 provides an avenue to avoid the immunity granted a state or state official if the state accepts federal
14 funds and the claim involves allegations of discrimination based on a protected class. Here, the
15 County is not entitled to the same immunity and Plaintiff has attempted, but failed, to allege a direct
16 claim under Section 1983. Regardless whether the County receives federal funding to enforce child
17 protective measures, there is no support for an allegation that the County Defendants’ actions or
18 inactions were motivated by animus regarding Plaintiff’s gender as the female protective parent.
19 Accordingly, the claim for gender discrimination fails as against County Defendants as a matter of
20 law and the motion to dismiss the claim is granted.

21 **D. State Defendants’ Motion to Dismiss.**

22 In her amended complaint, Plaintiff alleges a single cause of action against the State
23 Defendants, for gender discrimination by recipients of federal funds. Again, the Court finds that
24 Plaintiff’s claims against the State Defendants are similarly barred under the *Rooker-Feldman*
25 doctrine, which provides that district courts lack jurisdiction to review the final determinations of a
26 state court in judicial proceedings. *See Feldman*, 460 U.S. at 487-87; *Rooker*, 263 U.S. at 415;
27 *Branson*, 62 F.3d at 291.

28 In addition, the Court finds that regardless whether the State Defendants receive federal


1 funding to enforce child protective measures, there is no support for an allegation that the State
2 Defendants' actions or inactions were motivated by animus regarding Plaintiff's gender. Finally,
3 Plaintiff has failed to allege sufficient facts or support her argument that the State Defendants have
4 waived their Eleventh Amendment immunity under any of the predicate statutes for the enforcement
5 of which Plaintiff alleges they have received federal funding. Accordingly, the sole claim against
6 the State Defendants fails as a matter of law and the motion to dismiss is granted.

7 **CONCLUSION**

8 The County Defendants' and the State Defendants' motions to dismiss are GRANTED
9 without leave to amend. As there are no further remaining causes of action pending against any
10 defendants, the Court shall issue a separate judgment and the Clerk shall close the file.

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12 **IT IS SO ORDERED.**

13 Dated: May 23, 2016

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16 JEFFREY S. WHITE
17 United States District Judge
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