IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Staci Burk, Plaintiff, v. Kelly Townsend, et al., Defendants.	No. CV-22-01967-PHX-DMF **ORDER**

This matter is before the Court on several motions filed by the parties in this matter, all of which are fully briefed. The named parties have consented to Magistrate Judge Jurisdiction pursuant to 28 U.S.C. § 636(c) (Docs. 8, 19, 65, 103). The Court has carefully reviewed the motions, the briefing thereon, the applicable law, and the record in this matter. The Court finds the motions suitable for decision without oral argument. *See* Rule 7.2, Rules of Practice of the United States District Court for the District of Arizona ("Local Rules" or "LRCiv").

I. PROCEDURAL HISTORY AND POSTURE

In November 2022, Plaintiff Stacy Burk ("Plaintiff"), a non-incarcerated and self-represented litigant, filed the pro se Complaint initiating this matter (Doc. 1). Plaintiff paid the filing fee at the time of filing the Complaint (Doc. 3).[1] Defendant Kelly Townsend ("Defendant Townsend") was the only named defendant in the Complaint (Doc. 1).

[1] The Court denied Plaintiff's April 2024 motion for appointment of counsel (Docs. 131, 138), and Plaintiff continues to proceed pro se in this matter.

Defendant Townsend moved to dismiss, or alternatively to strike, the Complaint on multiple bases, including failure to state a claim and failure to comply with Rules 8 and 10(b) of the Federal Rules of Civil Procedure (Doc. 13). The motion sought relief that included prohibition on filing an amended complaint (*Id.*). On April 10, 2024, after Plaintiff filed a response to Defendant Townsend's motion to dismiss/motion to strike (Doc. 22), Plaintiff moved for leave to amend her complaint (Doc. 24). No proposed amended complaint accompanied the motion for leave to amend (Doc. 24). On April 13, 2023, the Court denied Plaintiff's motion to amend without prejudice for failure to comply with LRCiv 15.1 (Doc. 27). The Order excerpted LRCiv 15.1 in its entirety (*Id.* at 2). In the non-compliant motion to amend which the Court denied without prejudice, Plaintiff had asserted that "given the opportunity, she is willing to draft the Complaint more concisely and clearly to streamline time for both the Court and the Defendant" (Doc. 24 at 2). Yet, almost a month later when the Court issued an Order on Defendant Townsend's motion to dismiss, Plaintiff had not filed another motion to amend her Complaint (Doc. 34).

On May 9, 2023, the Court ruled on Defendant Townsend's fully briefed motion to dismiss (Docs. 13, 22, 33), dismissing the Complaint without prejudice and with leave for Plaintiff to file an amended complaint (Doc. 34). The Order included appropriate description of complaint requirements and apparent deficiencies of Plaintiff's Complaint:

> A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2) (emphasis added). Rule 8(d)(1) states that "[e]ach allegation must be simple, concise, and direct." While Rule 8 does not demand detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* In determining whether a plaintiff fails to state a claim, the court assumes that all factual allegations in the complaint are true. *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). However, "the tenet that a court must accept a complaint's allegations as true is inapplicable to legal conclusions [and] mere conclusory statements." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 555 (2007)). The pertinent question is whether the factual allegations, assumed to be true, "state a claim to relief that is plausible on its face." *Id.* (citing *Twombly*, 550 U.S. at 570).

Where a complaint contains the factual elements of a cause of action, but those elements are scattered throughout the complaint without any meaningful organization, the complaint does not set forth a "short and plain statement of the claim" for purposes of Rule 8. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988). Further, a complaint may be dismissed where it lacks a cognizable legal theory, lacks sufficient facts alleged under a cognizable legal theory, or contains allegations disclosing some absolute defense or bar to recovery. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988); *Weisbuch v. County of L.A.*, 119 F.3d 778, 783 n.1 (9th Cir. 1997).

To survive dismissal, a complaint must give each defendant "fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). In the absence of fair notice, a defendant "should not be required to expend legal resources to guess which claims are asserted against her or to defend all claims 'just in case.'" *Gregory v. Ariz. Div. of Child Support Enforcement*, No. CV11-0372-PHX-DGC, 2011 WL 3203097, at *1 (D. Ariz. July 27, 2011).

Where the complaint has been filed by a pro se plaintiff, as is the case here, courts must "construe the pleadings liberally ... to afford the petitioner the benefit of any doubt." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). Under the pleading standard set by the Supreme Court's decision in *Iqbal*, however, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

. . .

Here, put simply, the Complaint's allegations are neither short nor plain, a substantial amount of the Complaint's allegations are not set forth in numbered paragraphs, and it would be impossible for any Defendant to meaningfully respond to the Complaint. Accordingly, the Court finds that the Complaint fails to comply with Rules 8 and 10(b) of the Federal Rules of Civil Procedure, and, therefore, it will be dismissed without prejudice. Based on the allegations in the Complaint, the Court is circumspect that Plaintiff will be able to assert a federal claim invoking this Court's jurisdiction. Nevertheless, the Court will provide Plaintiff, who is proceeding pro se, with an opportunity to file a first amended complaint.

> . . .
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> If Plaintiff files an amended complaint with any civil rights claims, Plaintiff must include in the first amended complaint short, plain, numbered statements asserting: (1) the constitutional right Plaintiff believes was violated; (2) the name of the Defendant who violated the right; (3) exactly what that Defendant did or failed to do; (4) how the action or inaction of that Defendant is connected to the violation of Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of that Defendant's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976). Plaintiff should repeat this process for each person she names as a Defendant. If Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific injury suffered by Plaintiff, the allegations against that Defendant are subject to dismissal for failure to state a claim. Conclusory allegations that a Defendant or group of Defendants has violated a constitutional right are not acceptable and are subject to dismissal.

(*Id.* at 2-4, 6). At the time of ruling on Defendant Townsend's motion to dismiss, all named parties had consented to Magistrate Judge Jurisdiction pursuant to 28 U.S.C. § 636(c) (Docs. 8, 19). In granting Defendant Townsend's motion to dismiss in part, the Court excused Defendant Townsend's non-compliance with LRCiv 12.1(c) regarding conferral before filing a motion to dismiss due to the likely futility of such (Doc. 34 at 5), excused Plaintiff from compliance with LRCiv 15.1 for an amended complaint because it appeared that "Plaintiff would be well served to start anew in her drafting of a first amended complaint" (*Id.*), and gave Plaintiff an extended period of time to file an amended complaint (Docs. 34, 35, 36).

On July 21, 2023, Plaintiff filed the first page of a First Amended Complaint (Doc. 37), and, a few days later, Plaintiff filed a replacement complaint in the form of a Second Amended Complaint (Doc. 38); the Second Amended Complaint named additional defendants to Defendant Townsend (*Id.*). The Court did not strike the Second Amended Complaint as untimely because it appeared that the reason for the slightly untimely Second Amended Complaint may have been technical problems (Doc. 39). Instead, the Court deemed the Second Amended Complaint timely filed (*Id.*).

Defendant Townsend thereafter moved to dismiss the Second Amended Complaint (Doc. 40), and the motion to dismiss was fully briefed (Docs. 50, 52). While the motion to dismiss the Second Amended Complaint was pending, Plaintiff filed a motion to amend and a proposed Third Amended Complaint (Docs. 48, 49). The Court denied Plaintiff's motion to amend (Doc. 54), stating:

> Plaintiff's motion to amend (Doc. 48) will be denied because Plaintiff's motion and the proposed third amended complaint (Doc. 49) do not comply with LRCiv 15.1. Also noteworthy is that the Court allowed Plaintiff ample time and previous opportunity to amend her originally deficient complaint. There is a pending and now fully briefed motion to dismiss the first and second amended complaints filed by Defendant Townsend (Docs. 40, 50, 52).

(*Id.* at 2-3).

On November 30, 2023, the Court lacked full consent of the named parties and issued an Order that the Court was inclined to issue a Report and Recommendation for dismissal of Plaintiff's Second Amended Complaint (Doc. 75).[2] The Court gave Plaintiff an opportunity to file a Third Amended Complaint correcting deficiencies in the previous complaints (*Id.*). In doing so, the Court stated:

> Among the deficiencies of the Second Amended Complaint, it appears that Plaintiff has not complied with previous court order(s) and the applicable Federal Rules of Civil Procedure ("Fed. R. Civ. P."), including Fed. R. Civ. P. 8(a), and it appears that the Second Amended Complaint may fail to state a claim upon which relief may be granted, *see* Fed. R. Civ. P. 12(b)(6), including a federal claim upon which relief may be granted and thereby depriving this Court of jurisdiction. Noteworthy is that the improperly proposed third amended complaint after Defendant Townsend's motion to dismiss was filed suffered from deficiencies similar to the Second Amended Complaint's deficiencies (see Docs. 48, 49, 54).

(*Id.* at 1-2). Further, the Court again excused Plaintiff from compliance with LRCiv 15.1 for a timely filed Third Amended Complaint pursuant to the Court's Order:

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[2] The Second Amended Complaint (Doc. 38) named additional defendants, not all of which had appeared. Therefore, at that time, undersigned could only proceed on dispositive matters by report and recommendation. *See Williams v. King*, 875 F.3d 500 (9th Cir. 2017); General Order 21-25.

The Court will allow Plaintiff leave to file a third amended complaint should Plaintiff choose to timely do so within twenty-one days of the date of this Order. For the third amended complaint, should Plaintiff choose to timely file such, the Court will not require Plaintiff to comply with LRCiv 15.1. Indeed, it appears that Plaintiff would be well served to start anew in her drafting of a third amended complaint. The Court's previous orders, especially the previous order dismissing the original complaint (Doc. 34), and the motions to dismiss by Defendant Townsend (Docs. 13, 40) sufficiently place Plaintiff on notice of the deficiencies of the Second Amended Complaint. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). Included in such notice of deficiencies, the Court reiterates:

> If Plaintiff files an amended complaint with any civil rights claims, Plaintiff must include in the first amended complaint short, plain, numbered statements asserting: (1) the constitutional right Plaintiff believes was violated; (2) the name of the Defendant who violated the right; (3) exactly what that Defendant did or failed to do; (4) how the action or inaction of that Defendant is connected to the violation of Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of that Defendant's conduct. *See Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976). Plaintiff should repeat this process for each person she names as a Defendant. If Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific injury suffered by Plaintiff, the allegations against that Defendant are subject to dismissal for failure to state a claim. Conclusory allegations that a Defendant or group of Defendants has violated a constitutional right are not acceptable and are subject to dismissal.

(Doc. 34 at 5-6). Extensive "background" and other purported context should not be incorporated by reference in any claim because to survive dismissal, a complaint must give each defendant "fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). In the absence of fair notice, a defendant "should not be required to expend legal resources to guess which claims are asserted against her or to defend all claims 'just in case.'" *Gregory v. Ariz. Div. of Child Support Enforcement*, No. CV11-0372-PHX-DGC, 2011 WL 3203097, at *1 (D. Ariz. July 27, 2011). Further, the Court's jurisdiction rests on properly plead civil rights claim(s) given the remainder of the claims being state law claims. *See* 28 U.S.C. § 1331.

(*Id.* at 2-3). The November 30, 2023, Order also referenced two applicable pleading rules and included internet links to resources for pro se litigants (*Id.* at 3-4). The Court further ordered that the timely filing of a third amended complaint by Plaintiff would render the pending motion to dismiss the Second Amended Complaint (Doc. 40) moot (*Id.* at 4-5). While the Court excused compliance with LRCiv 15.1 for a timely third amended complaint pursuant to the Order, the Court required that any third amended complaint cure deficiencies of the previous complaints and comply with the Court's Orders (*Id.* at 2-4). Some weeks later, the Court granted Plaintiff's request for an extension of time to file a third amended complaint pursuant to the Court's November 30, 2023, Order (Docs. 83, 85).

On January 2, 2024, Plaintiff filed a Third Amended Complaint (Doc. 98). The named defendants in the Third Amended Complaint are Defendants Townsend, Flynn, and Powell (Doc. 98), while the named defendants in the Second Amended Complaint also included Defendants Ryan Hartwig, Doug Logan, and Town of Florence (Doc. 38).[3]

All named Defendants in Plaintiff's Third Amended Complaint have appeared and filed motions to dismiss (Docs. 99, 107, 144). Specifically, on January 16, 2024, Defendant Townsend filed a Motion to Dismiss the Third Amended Complaint (Doc. 99). Plaintiff filed her response on March 8, 2024 (Doc. 117) and Defendant Townsend filed a reply on April 1, 2024 (Doc. 130). On January 30, 2024, Defendant Flynn filed a Motion to Dismiss (Doc. 107), which Defendant Townsend joined on February 7, 2024 (Doc. 109). Plaintiff filed her response on March 8, 2024 (Doc. 118), and Defendant Flynn filed a reply on March 25, 2024 (Doc. 125). On April 2, 2024, Plaintiff filed a "Motion for Leave to File a Sub Reply" (Doc. 132). Plaintiff attached to her motion her "Sub-Reply to Defendant's Townsend and Flynn's Reply" (Doc. 132-1). A response (Doc. 139) and reply (Doc. 140) have been filed. On May 2, 2024, Defendant Powell filed a Motion to Dismiss (Doc. 144).

[3] Plaintiff and Town of Florence agreed to dismiss Town of Florence from the lawsuit (Docs. 69, 70, 72).

Plaintiff filed her response on June 10, 2024 (Doc. 155). On June 17, 2024, Defendant Powell filed a reply (Doc. 157).

After careful review of the record, the parties briefing, and the applicable law, the Court rules on the pending motions, including Defendants Townsend, Flynn, and Powell's (collectively, "Defendants") motions to dismiss, as set forth below.

II. PLAINTIFF'S "MOTION FOR LEAVE TO FILE A SUB REPLY" (Doc. 132)

Plaintiff's pending "Motion for Leave to File a Sub Reply" (Doc. 132) is a motion for leave to file a sur-reply and states in its entirety:

> Plaintiff respectfully requests the Court grant permission for Plaintiff to file the attached sub-reply addressing Defendant's Townsend and Flynn's after-the-fact attempts to "cure" their deliberate failure to abide by the Court's Local Rule 12.1(c) while alleging their belief the Court had signaled to them it would Rule against any further amendments by Plaintiff, even a permissive one between the parties, and thus it was not necessary for Defendant's to comply with the Rule.

(*Id.* at 1). Yet, the attached proposed sur-reply goes beyond the issue that Plaintiff describes as reason for requesting leave to file a sur-reply (Doc. 132-1). The motion (Doc. 132) is fully briefed (Docs. 139, 140). The Court agrees that an "earlier [LRCiv] 12.1(c) conference plainly would not have resolved those issues (nor any other issues in this case)." (Doc. 139 at 2). Further, after careful review of the parties' briefing, the record in this matter, and applicable law, the Court finds that Plaintiff's proposed sur-reply is not appropriate or helpful to the Court. Finally, Plaintiff's reply states that she withdraws her request to file a sur-reply (Doc. 140). Plaintiff's "Motion for Leave to File a Sub Reply" (Doc. 132) will be denied.

III. MOTIONS TO DISMISS (Docs. 99, 107, 109, 144)

All named defendants in the Third Amended Complaint (Doc. 98)—Defendants Townsend, Flynn, and Powell—have appeared and filed motions to dismiss the Third Amended Complaint (Docs. 99, 107, 109, 144). As set forth in section I, *supra*, the motions to dismiss the Third Amended Complaint are fully briefed.

The Defendants' motions to dismiss argue for dismissal based on various grounds, including failure to comply with the Court's previous Orders and rules regarding pleading, failure to state a claim upon which relief may be granted, statute of limitations regarding civil rights claims, legislative immunity as to at least Defendant Townsend, lack of supplemental jurisdiction for Plaintiff's state law claims, and that Plaintiff's failure to comply with A.R.S. § 12-821.01 is fatal to Plaintiff's state common law claims against Defendant Townsend (Docs. 99, 107, 144).

As stated above in section II, *supra*, the Court finds that an earlier LRCiv 12.1(c) conference plainly would not have resolved the issues raised in the motion to dismiss; the Court rejects Plaintiff's arguments that the Court should deny the motions to dismiss for failure to earlier (or at all) confer with Plaintiff regarding the matters raised in the motions to dismiss the Third Amended Complaint.

A. Complaint Requirements and Legal Standard Regarding Motions to Dismiss

A pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2) (emphasis added). Rule 8(d)(1) states that "[e]ach allegation must be simple, concise, and direct." While Rule 8 does not demand detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Where a complaint contains the factual elements of a cause of action, but those elements are scattered throughout the complaint without any meaningful organization, the complaint does not set forth a "short and plain statement of the claim" for purposes of Rule 8. *Sparling v. Hoffman Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988) (abrogated on other grounds by *Smith v. Spizzirri*, 601 U.S. 472 (2024)).

A complaint may be dismissed where it lacks a cognizable legal theory, lacks sufficient facts alleged under a cognizable legal theory, or contains allegations disclosing some absolute defense or bar to recovery. *See Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988); *Weisbuch v. County of L.A.*, 119 F.3d 778, 783 n.1 (9th Cir. 1997).

To survive dismissal, a complaint must give each defendant "fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). In the absence of fair notice, a defendant "should not be required to expend legal resources to guess which claims are asserted against her or to defend all claims 'just in case.'" *Gregory v. Ariz. Div. of Child Support Enforcement*, No. CV11-0372-PHX-DGC, 2011 WL 3203097, at *1 (D. Ariz. July 27, 2011). Where the complaint has been filed by a pro se plaintiff, as is the case here, courts must "construe the pleadings liberally ... to afford the petitioner the benefit of any doubt." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted). Under the pleading standard set by the Supreme Court's decision in *Iqbal*, however, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. In other words, a court need not blindly accept conclusory allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

The factual "allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp.*, 550 U.S. at 555; s*ee Iqbal*, 556 U.S. at 678 (stating that well-pleaded factual allegations are accepted as true for purposes of a motion to dismiss). That is, the complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (internal quotation marks omitted). The determination of whether a complaint satisfies the plausibility standard is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. A court is generally limited to the pleadings and must construe all "factual allegations set forth in the complaint ... as true and ... in the light most favorable" to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001).

As a general matter, when a motion to dismiss is granted, the court should provide leave to amend unless it is clear that the complaint could not be saved by any amendment. *See* Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Leave to amend may be denied when "the court determines that the

allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Thus, leave to amend "is properly denied ... if amendment would be futile." *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). Further, leave to amend need not be granted if, among other factors, the Court determines that there has been a showing of: (1) undue delay; (2) bad faith or dilatory motives on the part of the movant; (3) repeated failure to cure deficiencies by previous amendments; (4) undue prejudice to the opposing party; or (5) futility of the proposed amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Desertrain v. Los Angeles*, 754 F.3d 1147, 1154 (9th Cir. 2014).

B. Jurisdiction

Plaintiff's Third Amended Complaint alleges federal question jurisdiction pursuant to 28 U.S.C. § 1331 due to the claims arising out of 42 U.S.C. § 1983, and the Third Amended Complaint alleges supplemental jurisdiction over the state claims pursuant to 28 U.S.C. § 1367 (Doc. 98 at 2, ¶¶ 2-3). In any event, because Plaintiff's and Defendant Townsend's residences are in the state of Arizona, diversity jurisdiction fails. 28 U.S.C. § 1332.[4]

A district court may decline to exercise supplemental jurisdiction over supplemental state law claims if "the district court has dismissed all claims over which it has original jurisdiction[.]" 28 U.S.C. § 1367(c)(3). Generally, when federal claims are dismissed before trial, state claims before the court based on supplemental jurisdiction should also be dismissed. *Religious Tech. Ctr. v. Wollersheim*, 971 F.2d 364, 367-68 (9th Cir. 1992); *see also Acri v. Varian Associates, Inc.*, 114 F.3d 999, 1001 (9th Cir. 1997) ("The Supreme Court has stated, and we have often repeated, that 'in the usual case in which all federal-law claims are eliminated before trial, the balance of factors ... will point toward declining

[4] Plaintiff's Third Amended Complaint alleges Defendant Townsend is resident of the state of Arizona (Doc. 98 at 2, ¶ 4), like Plaintiff (Doc. 98 at 3, ¶ 7). For diversity purposes, a natural person is a citizen of the state where he or she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F. 2d 1088, 1090 (9th Cir. 1981). A natural person's domicile is the place he or she resides with the intention to remain or to which he or she intends to return. *Kanter v. Warner-Lambert Co.*, 265 F. 3d 853, 857 (9th Cir. 2001).

to exercise jurisdiction over the remaining state-law claims'" (citation omitted)); *Gini v. Las Vegas Metro. Police Dept.*, 40 F.3d 1041, 1046 (9th Cir. 1994) (when federal law claims are eliminated before trial, the court generally should decline jurisdiction over state law claims and dismiss them without prejudice).

C. Claims Arising out of 42 U.S.C. § 1983

To state a claim under 42 U.S.C. § 1983 (or "Section 1983"), a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States; and (2) that the alleged violation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Regarding the first factor to state a claim under 42 U.S.C. § 1983 (the violation of a right secured by the Constitution or laws of the United States), Plaintiff alleges violations of her First Amendment Rights, her Fourth Amendment Rights, and her substantive due process rights pursuant to the Fourteenth Amendment.

As the Ninth Circuit has explained regarding Section 1983 claims for infringement of First Amendment rights:

> A plaintiff may bring a Section 1983 claim alleging that public officials, acting in their official capacity, took action with the intent to retaliate against, obstruct, or chill the plaintiff's First Amendment rights. *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986). To bring a First Amendment retaliation claim, the plaintiff must allege that (1) it engaged in constitutionally protected activity; (2) the defendant's actions would "chill a person of ordinary firmness" from continuing to engage in the protected activity; and (3) the protected activity was a substantial motivating factor in the defendant's conduct—i.e., that there was a nexus between the defendant's actions and an intent to chill speech. *O'Brien*, 818 F.3d at 933–34 (citing *Pinard v. Clatskanie Sch. Dist. 6J*, 467 F.3d 755, 770 (9th Cir. 2006); *Mendocino Envt'l Ctr. v. Mendocino County*, 192 F.3d 1283, 1300 (9th Cir. 1999)); *see also Blair v. Bethel Sch. Dist.*, 608 F.3d 540, 543 (9th Cir. 2010). Further, to prevail on such a claim, a plaintiff need only show that the defendant "intended to interfere" with the plaintiff's First Amendment rights and that it suffered some injury as a result; the plaintiff is not required to demonstrate that its speech was actually suppressed or inhibited. *Mendocino Envt'l Ctr.*, 192 F.3d at 1300.

Arizona Students' Ass'n v. Arizona Bd. of Regents, 824 F.3d 858, 867 (9th Cir. 2016).

To state a claim that she was deprived of her Fourth Amendment rights, Plaintiff must plausibly allege that she was subjected to an intentional and unreasonable search or seizure by an individual acting under authority of law. *Brower v. Cty. of Inyo*, 489 U.S. 593, 596 (1989); *Lacy v. Cty. of Maricopa*, 631 F. Supp. 2d 1183, 1193 (D. Ariz. 2008). A seizure is reasonable where consent to the seizure is freely given by the plaintiff. *Kentucky v. King*, 563 U.S. 452, 463 (2011). Courts must look to the totality of the circumstances to determine whether consent to the seizure was freely given and must consider how the officers asked to seize the individual and whether the seized person had any vulnerabilities at the time. *Schbeckloth v. Bustamonte*, 412 U.S. 218, 227, 229 (1973).

Substantive due process prevents the government from interfering with "fundamental rights" without justification. *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772, 780 (9th Cir. 2014) (en banc); *see Washington v. Glucksberg*, 521 U.S. 702, 719–20 (1997). When asserting a substantive due process claim, the burden is on the plaintiff to establish that the government deprived her of a protected fundamental right. *Wedges/Ledges of Cal., Inc. v. City of Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994). The Supreme Court has cautioned courts against adding to, re-defining, or broadening the scope of fundamental rights that substantive due process has been found to protect. *See Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992); *Brittain v. Hansen*, 451 F.3d 982, 991 (9th Cir. 2006). Courts have declined to find a protected liberty interest when the plaintiff's sole injury is emotional harm. *Krainski v. Nev. ex rel. Bd. Regents Nev. Sys. Higher Educ.*, 616 F.3d 963, 970 (9th Cir. 2010); *see also McLean v. Pine Eagle Sch. Dist., No. 61*, 194 F. Supp. 3d 1102, 1114 (D. Or. 2016).

As to the second factor to state a claim under 42 U.S.C. § 1983 (that the alleged violation was committed by a person acting under color of state law), an individual acts "under color of state law" for purposes of Section 1983 when the individual has "exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'" *Rawson v. Recovery Innovations, Inc.*, 975 F.3d 742, 748 (9th Cir. 2020) (quoting *West*, 487 U.S. at 49). Even a Section 1983 claim for a

private actor's conduct requires that the state policy requirement and the state actor requirement be met as to the private actor. *Wright v. Serv. Emps. Int'l Union Loc. 503*, 48 F.4th 1112, 1121 (9th Cir. 2022). Section 1983 "protects against acts attributable to a State, not those of a private person." *Lindke v. Freed*, 601 U.S. 187, 194-195 (2024). Nor does Section 1983 protect against acts of a state official while acting as a private citizen. *Id.* at 195-198.

Under the first requirement, the question is whether the claimed constitutional deprivation resulted from the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible. *Id.* at 1121-22. Under the second requirement, courts generally use one of four tests outlined by the United States Supreme Court to examine whether, in all fairness, the party charged with the deprivation could be described as a "state actor" regarding the conduct at issue. *Id.* at 1122. The four tests are the public function test, the joint action test, the state compulsion test, and the governmental nexus test. *Id.*; *see Rawson*, 975 F.3d at 747; *Wright*, 48 F.4th at 1124 (public function test and joint action test); *Florer v. Congregation Pidyon Shevuyim, N.A.*, 639 F.3d 916, 924-26 (9th Cir. 2011) (public function test); *Pasadena Republican Club v. W. Justice Ctr.*, 985 F.3d 1161, 1167-71 (9th Cir. 2021) (joint action test); *Johnson v. Knowles*, 113 F.3d 1114, 1119-20 (9th Cir. 1997) (state compulsion test); *Lindke*, 601 U.S. at 195-199 (governmental nexus test; holding that where a city manager deleted comments from posts on his individual social media page and blocked the commenter, a showing of state action would require a plaintiff to show that the city manager had actual authority to speak on behalf of the State on a particular matter and purported to exercise that authority in the relevant posts).

Further, Section 1983 liability may be imposed on a defendant only if the plaintiff can show that the defendant proximately caused the deprivation of a federally protected right. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). There is no Section 1983 liability simply because an individual supervised the alleged wrongdoer. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (no respondeat superior liability under Section

1983, *i.e.*, no liability under theory that one is liable simply because she supervises person who has violated plaintiff's rights). A supervisor can be held liable in his or her individual capacity under § 1983 only if the supervisor personally participated in the constitutional violation or there is a "sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011) (quoting *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989)). For Section 1983 liability to attach, supervisors must have actual supervisory authority over the government actor who committed the alleged constitutional violation. *Felarca v. Birgeneau*, 891 F.3d 809, 820 (9th Cir. 2018). Section 1983 defendants cannot be held liable as supervisors for actions "of persons beyond their control." *Id.*

Importantly, in order to allege a conspiracy under Section 1983, a plaintiff must show "an agreement or 'meeting of the minds' to violate constitutional rights." *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002) (citing *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1540–41 (9th Cir.1989) (en banc)). Plaintiff must allege an agreement or "meeting of the minds" to violate the plaintiff's constitutional rights. *Woodrum v. Woodward County, Okl.*, 866 F.2d 1121, 1126 (9th Cir. 1989). Conclusory allegations do not support a claim for the violation of a plaintiff's constitutional rights under Section 1983. *Id.* "To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy." *Id.* at 441. This agreement or meeting of the minds may be inferred on the basis of circumstantial evidence, such as the actions of the defendants. *Mendocino Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1301 (9th Cir. 1999). A showing that defendants committed acts that "are unlikely to have been undertaken without an agreement" may support the inference of conspiracy. *Id.* "The defendants must have, by some concerted action, intend[ed] to accomplish some unlawful objective for the purpose of harming another which results in damage." *Id.* Importantly, a conspiracy claim requires an "actual deprivation of […] constitutional rights." *Hart v. Parks*, 450 F.3d 1059, 1071 (9th Cir. 2006).

D. Discussion

First, Plaintiff was provided clear instructions, multiple opportunities, and more than sufficient time to file a complaint that comports with pleading requirements. The Court agrees with the arguments by the defense that Plaintiff's Third Amended Complaint violates Fed. R. Civ. P. 8 and fails to comply with this Court's clear instructions as to deficiencies. Plaintiff's Count One does not start until page 42 of the Third Amended Complaint and after over ninety-eight paragraphs of background and conclusory statements (Doc. 98 at 42, ¶ 99). The title on page 5 of Plaintiff's Third Amended Complaint that paragraph 12 begins a "Brief Background and History" contradicts the over 80 paragraphs and over thirty pages that follow before the actual claims are set forth (Doc. 98 at 5). Like the original Complaint and the Second Amended Complaint, the Third Amended Complaint's allegations "are neither short nor plain" and "it would be impossible for any Defendant to meaningfully respond" (Doc. 34 at 4). The Court agrees with Defendant Powell that rather than comply with the Court's Order, the Third Amended Complaint "persists in the same kind of digressive political narrative that plagued [Plaintiff's] prior complaints and fails to put [Defendant] Powell on fair notice of what this case is about" (Doc. 144 at 9). This holds true for the allegations against all of the defendants. The Third Amended Complaint is rife with "[c]onclusory allegations that a Defendant or group of Defendants has violated a constitutional right" despite the Court's warning against such (Doc. 34 at 6). Plaintiff's attempt to describe or submit materials outside of the Complaint itself (Docs. 155-1, 155-2) does not satisfy the pleading requirements and cannot save any of the Third Amended Complaint's deficiencies discussed below because the Court is limited to the factual allegations in the Third Amended Complaint. *Lee*, 250 F.3d at 679. Plaintiff has failed to comply with the Court's orders and rules regarding pleading requirements; for this reason alone, the Third Amended Compliant will be dismissed.

Second, the Third Amended Complaint alleges that since 2010 and through the events at issue, Defendant Townsend served in the Arizona legislature (Doc. 98 at 4, ¶ 8; Doc. 98 at 11, ¶ 30). Any allegations regarding and claims of harm to Plaintiff from

Defendant Townsend's investigation of potential election fraud in her role as a local legislator and in the sphere of legitimate legislative activity fail as a matter of law to state a claim under 42 U.S.C. § 1983 due to Defendant Townsend's legislative immunity. *See Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998); *Tenney v. Brandhove*, 341 U.S. 367, 377 (1951); *Jones v. Allison*, 9 F.4th 1136, 1141 (9th Cir. 2021) ("an official's authority to regulate does not depend on whether a particular action yielded an enforceable or sustainable result" but "exists where officials acted in the sphere of legitimate legislative activity" (quotations and citations omitted)). Whether an act is legislative, and thus invokes legislative immunity, turns on the nature of the act, rather than on the motive or intent of the official performing it. *Bogan*, 523 U.S. at 54; *see also Hernandez v. Oregon Legislature*, 521 F. Supp. 3d 1025, 1035 (D. Or. 2021). At least some of the allegations forming the basis of Plaintiff's Section 1983 claims arise from legitimate legislative activity, and claims based on such fail as a matter of law.

Third, the Third Amended Complaint fails to state a claim against any defendant arising out of 42 U.S.C. § 1983.[5] The actions of which Plaintiff complains in her Third Amended Complaint were actions of private security firms "Mayhem Security Solutions and First Amendment Pretorians" about whom Plaintiff makes a conclusory assertion that Defendant "Townsend solicited support of co-Defendants Flynn and Powell to engage" (Doc. 98 at 8, ¶ 22; *see also* Doc. 98 at 8, ¶ 23 ("agents associated with Townsend swarmed Plaintiff's home"); Doc. 98 at 8, ¶ 24 (the persons who came to Plaintiff's home were acting at "the direction of Defendant Townsend carrying out her and her co-Defendant's investigation into election fraud"); Doc. 98 at 12-13, ¶ 36 (Townsend "conspired with co-

[5] The Court does not agree with all of Defendants' arguments in support of their motion to dismiss. For example, there is not a one-year statute of limitations for Section 1983 actions in Arizona; rather, Arizona's two-year statute of limitations for personal injury actions applies to Section 1983 actions. *Krug v. Imbordino*, 896 F.2d 395, 396-97 (9th Cir. 1990). Further, courts may dismiss a complaint on statute of limitations grounds "only when 'the running of the statute is apparent on the face of the complaint.'" *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (quoting *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir. 2006)).

Defendants Powell and Flynn to deploy armed agents to Plaintiff's house under the false pretense of providing Plaintiff with security when, in actuality, the agents were sent to surveil, interrogate, and intimidate Plaintiff for the purpose of controlling and chilling Plaintiff's freedom of speech and right to petition government for redress of grievances"); Doc. 98 at 19, ¶ 42(c) (Plaintiff complains of "armed former FBI and law enforcement agents occupying common living areas, eating her food, accessing her home security system and network devices, and monitoring her private conversations"); Doc. 98 at 25-26, ¶ 61). Plaintiff does not allege that any of the named Defendants came to her home and performed a specific act (Doc. 98), and 42 U.S.C. § 1983 does not allow respondeat superior liability. Further, the Third Amended Complaint has not sufficiently alleged state action subject to Section 1983 redress as to any of the Defendants; this is especially obvious as to the non-legislator defendants, Defendants Flynn and Powell. *See* Doc. 98.

In addition, Plaintiff has not stated a claim for a Section 1983 conspiracy because Plaintiff also has not sufficiently alleged a meeting of the minds by the Defendants to violate any of her constitutional rights, nor has Plaintiff alleged that the Defendants, by some concerted action, intended to accomplish some unlawful objective for the purpose of harming Plaintiff and which results in damage. Plaintiff's conclusory accusations of the named Defendants conspiring with each other do not suffice. Nor do Plaintiff's assertions of the named Defendants communicating with and consulting with each other in the Third Amended Complaint suffice to state any civil rights claim against the named Defendants. Plaintiff alleges that "[i]n Townsend's de facto law enforcement role, she sought access to witnesses from Plaintiff and evidence to substantiate her allegations of election fraud" and "[i]n doing so, Townsend worked closely with Sidney Powell, a former Federal prosecutor, for advice and logistical support in building a winning case, as well as Michael Flynn for intelligence and law enforcement evidence gathering and support." (Doc. 98 at 6, ¶ 17). These and other allegations by Plaintiff are insufficient to state a federal civil rights conspiracy claim.

In addition and in any event, Plaintiff has not sufficiently alleged an actual violation of her constitutional rights. As Defendants argue, Plaintiff's assertions that that she was "gaslighted" (Doc. 98 at 13, ¶ 37(d); Doc. 98 at 15, ¶ 38(f); Doc. 98 at 16, ¶ 39(d)) and otherwise persuaded not to speak publicly about some matters does not meet the requirement that she engaged in protected speech and was retaliated against for such.[6] Nor do Plaintiff's allegations meet the requirement that any public official, acting in official capacity, took action with the intent to retaliate against, obstruct, or chill Plaintiff's First Amendment rights. As Defendants argue, Plaintiff has not alleged that she was restrained by physical force, and she has not plausibly alleged that she was involuntarily seized at all, let alone by a show of governmental authority by any of the Defendants. Rather, the Third Amended Complaint alleges that Plaintiff allowed the private persons into her home because Plaintiff believed that she needed protection because she and her family were in danger (Doc. 98 at 18-19, ¶ 42; *see also* Doc. 98 at 8-9, ¶ 25). Thus, Plaintiff has not stated a claim for violation of her Fourth Amendment rights against Defendant Townsend, Flynn, or Powell. Also, as Defendants argue, Plaintiff's allegations of emotional harm but no actual physical injury proximately caused by Defendants' actions are insufficient to state a Fourteenth Amendment substantive due process claim (Doc. 98 at 23, ¶ 53; Doc. 98 at 32-33, ¶ 76; Doc. 98 at 42, ¶ 98). Plaintiff is not a child and was not in official custody, and therefore has not alleged the deprivation of a fundamental right (Doc. 98).

Because Plaintiff has not stated a claim against Defendant Townsend, Flynn, or Powell arising out of 42 U.S.C. § 1983, this Court lacks federal question jurisdiction. The Court declines to exercise supplemental jurisdiction over the state law claims alleged in the Third Amended Complaint due to this Court's considerations of judicial economy, convenience, fairness, and comity. *See Oliver v. Ralphs Grocery Co.*, 654 F.3d 903, 911 (9th Cir. 2011) ("By granting summary judgment to Ralphs and Cypress Creek on Oliver's

[6] Plaintiff uses words like "coercion" conclusively and in contexts were persuaded or encouraged fit the circumstances alleged by Plaintiff (*see, e.g.*, Doc. 98 at 16, ¶ 39(d); Doc. 98 at 50, ¶ 127; Doc. 98 at 51, ¶ 132). Using the word "coercion" or similar words does not convert an insufficient claim to one that survives a Rule 12(b)(6) motion.

ADA claim, the district court properly disposed of 'all claims over which it ha[d] original jurisdiction.' 28 U.S.C. § 1367(c)(3). Because the balance of the factors of 'judicial economy, convenience, fairness, and comity' did not 'tip in favor of retaining the state-law claims' after the dismissal of the ADA claim, [citations omitted], the district court did not abuse its discretion in dismissing Oliver's state law claims without prejudice.").[7] The appropriate forum for such claims is the Arizona state courts, where Plaintiff already has already filed one lawsuit related to the alleged events (*see* Docs. 155-1, 156, 167, 168, 169). Further, diversity jurisdiction is not available for any of Plaintiff's claims due to Plaintiff and Defendant Townsend both being residents of Arizona. 28 U.S.C. § 1332. Thus, the Court will not reach any of the Defendants' motion to dismiss arguments regarding the state law claims.

As set forth above, Defendants' pending motions to dismiss (Docs. 99, 107, 144) will be granted in part. Particularly given that the Court need not and did not review whether the state law claims in the Third Amended Complaint are sufficiently plead, the Third Amended Complaint will be dismissed without prejudice rather than with prejudice as requested by Defendants.

IV. PLAINTIFF'S MOTION TO AMEND (Doc. 156)

On June 12, 2024, Plaintiff filed a motion to amend the Third Amended Complaint and a proposed Fourth Amended Complaint (Doc. 156). Defendants oppose the motion to amend (Docs. 162, 163, 164). Plaintiff filed a reply in support of her motion to amend and also filed two purported notices of errata (Docs. 167, 168, 169); Plaintiff's reply contains yet another request to amend the proposed amended complaint (*Id.*).[8]

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[7] Defendants' motions to dismiss provided Plaintiff notice that the Court may decline supplemental jurisdiction over the state law claims should Plaintiff fail to state a federal question claim (Doc. 107 at 18; Doc. 109; Doc. 144 at 21).

[8] The purported "Notices of Errata" (Docs. 168, 169) are not only untimely (Doc. 166), but they also do not comply with applicable rules. *See* Fed. R. Civ. P. 10(a) ("Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation."); Fed. R. Civ. P. 7(b)(2) ("The rules governing captions and other matters of form in pleadings apply to motions and other papers."). Plaintiff's flouting of Court

Granting or denying leave to amend is a matter committed to the Court's discretion. *Hartmann v. California Dep't of Corr. & Rehab*., 707 F.3d 1114, 1129 (9th Cir. 2013). While leave to amend should be freely given, leave to amend should not be granted automatically. *Jackson v. Bank of Hawaii*, 902 F.2d 1385, 1387 (9th Cir. 1990). Leave to amend need not be granted if, among other factors, the Court determines that there has been a showing of: (1) undue delay; (2) bad faith or dilatory motives on the part of the movant; (3) repeated failure to cure deficiencies by previous amendments; (4) undue prejudice to the opposing party; or (5) futility of the proposed amendment. *Foman*, 371 U.S. at 182; *Desertrain*, 754 F.3d at 1154. Further, under Fed. R. Civ. P. 15(a), futility of amendment is sufficient to justify denial of a motion for leave to amend. *See Gordon v. City of Oakland*, 627 F.3d 1092, 1094 (9th Cir. 2010). A proposed amended complaint is futile if, accepting all of the facts alleged as true, it would be immediately "subject to dismissal" for failure to state a claim on which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998).

Upon careful review of the record in this matter and applicable law, the Court agrees with the Defendants' arguments in their responses in opposition to Plaintiff's motion to amend that Plaintiff should not again be afforded leave to amend.

Plaintiff's motion to amend and proposed Fourth Amended Complaint(s) do not comply with LRCiv 15.1 (Docs. 156, 167, 168, 169), and the Court has not excused Plaintiff from the requirements of LRCiv 15.1 for any additional motion to amend or proposed amended complaint beyond the Third Amended Complaint filed on January 2, 2024. Plaintiff crossing out her entire Third Amended Complaint and re-writing a new complaint as her proposed Fourth Amended Complaint defies the letter and spirit of LRCiv 15.1. The record is clear that Plaintiff was well aware of the requirements of LRCiv 15.1, but did not comply. A district court's local rules are not petty requirements but have "the

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deadlines and rules is further evidenced by Plaintiff's August 9, 2024, filing of an additional "Notice of Errata" (Doc. 170), that was stricken (Doc. 171).

force of law." *Hollingsworth v. Perry*, 558 U.S. 183, 191 (2010) (citation omitted). Further, compliance with LRCiv 15.1 is particularly important in this case because compliance with LRCiv 15.1 allows the Court to properly review any proposed amended complaint under the applicable standard given the deficiencies in the Third Amended Complaint. Plaintiff's non-compliance with LRCiv 15.1 is sufficient reason and is good reason for denial of Plaintiff's pending motion to amend. Plaintiff's motion will be denied.

As separate and additional reason for denial of Plaintiff's motion to amend, Plaintiff has had several previous opportunities to amend and has failed to cure the deficiencies in previous versions of the Complaint identified by the multiple motions to dismiss and the Court. The events at issue were several years ago. Plaintiff clearly knew about the newly proposed Koch defendants very early in this litigation, having sued the Koch defendants in superior court in 2022 (Doc. 156; *see* Doc. 169 at 1). In this matter, Plaintiff has asked for (and received) multiple extensions of time. At this point, the Court concludes undue delay and dilatory motives in Plaintiff's seeking to yet again amend her complaint.

In addition, allowing amendment would be futile. The proposed Fourth Amended Complaint submitted with the motion to amend does not cure the deficiencies in the claims supporting federal question jurisdiction. The addition of already sued defendants in superior court, Kenneth Scott Koch and spouse Amanda Koch, would not remedy the jurisdictional (or other) problems with Plaintiff's claims in this Court.[9] Also, putting the defendants, especially Defendant Townsend, in a position to have to brief yet another motion to dismiss on yet another version of the complaint amounts to undue prejudice.

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[9] In her first version of the proposed Fourth Amended Complaint, Plaintiff asserts that "Defendant Kenneth Scott Koch, aka Scott Koch, was a resident of Arizona, a former Sheriff's Deputy, and an Oathkeeper militia member. In 2020, Koch was Director of Business Development for Mayhem Security Solutions, involved in organizing 'Reopen Arizona' rallies before the 2020 election which Townsend spoke at and converged with the 'Stop the Steal' movement." (Doc. 156-3 at 3). In the subsequent proposed version of a proposed Fourth Amended Complaint submitted with Plaintiff's reply, Plaintiff asserts Kenneth Scott Koch "was the Director of Business Development for Mayhem Security Group, in November 2020" and "falsely held himself out to be a government official" (Doc. 167-1 at 4).

Further, it is not appropriate to raise additional amendments or present new information and arguments in reply as Plaintiff has done here, including her untimely, improperly submitted, and procedurally inappropriate "Notices of Errata" (Docs. 168, 169). Plaintiff's submissions of repeatedly changing versions of the complaint underscore Plaintiff's undue delay, Plaintiff's dilatory motives, and undue prejudice to the defendants of allowing the proposed additional amendments to the operating complaint at this stage in the litigation and after developed litigation in the superior court against proposed new defendants in this matter.

Finally, the Court agrees with Defendants that Plaintiff's request to somehow consolidate the ongoing superior court case and this case is devoid of legal basis and is contrary to applicable law.

For the reasons above, Plaintiff's motion to amend (Doc. 156), including any request to amend that is additional or different in her reply in support of the motion to amend (Docs. 167, 168, 169), will be entirely denied.

V. FURTHER LEAVE TO AMEND IS NOT APPROPRIATE

Plaintiff has had sufficient opportunity leading up to the Third Amended Complaint to file a complaint that complies with the pleading standards and applicable law for stating a federal question claim if she could do so. Plaintiff has been provided clear instructions, has been afforded multiple tries, and has been granted a more than sufficient period of time to do so. The Court agrees with Defendant Flynn that:

> Plaintiff's opposition brief demonstrates that any further amendment would be a waste of time, as she repeatedly meanders back into the same type of non-sequiturs and confusing conspiracy theories that have plagued each iteration of her complaint. *See, e.g.*, Dkt. No. 118 at 9, 9 n.4, 13, 14–15, 17–18, 20, 22. She repeatedly refers to actions of unspecified "defendants," plural, without specifying to whom she is referring. *See, e.g.*, Dkt. No. 118 at 19, 22, 24. She repeatedly claims to have pleaded facts which appear nowhere in her complaints. *See, e.g.*[,] Dkt. No. 118 at 10, 17. She attributes actions to General Flynn with citations to paragraphs that refer only to Defendant Townsend (or which otherwise bear no relation to the description in her opposition brief). *See, e.g.*, Dkt. No. 118 at 10, 17, 20 n.12, 23. Plaintiff does not and cannot show facts of an agreement by General Flynn to do

> anything other than investigate election fraud, and does not allege any actions of General Flynn that would subject him to liability.

(Doc. 125 at 3). The same is also true for the other named Defendants (*see* Docs. 117, 155). For these reasons and for the reasons discussed in the above sections, granting Plaintiff leave to file an additional amended complaint in this Court would be futile insofar as stating a federal claim and invoking this Court's jurisdiction. Further, granting Plaintiff leave to file an additional amended complaint would be unduly prejudicial to the defendants given the procedural history and record in this matter, especially to Defendant Townsend.

Plaintiff will not be granted leave to file another amended complaint, this matter will be dismissed without prejudice, and the Clerk of Court will be directed to terminate this matter.

Accordingly,

IT IS ORDERED denying Plaintiff's "Motion for Leave to File a Sub Reply" (Doc. 132).

IT IS FURTHER ORDERED granting Defendant Townsend's motion to dismiss (Doc. 99) as stated herein.

IT IS FURTHER ORDERED granting Defendant Flynn's motion to dismiss (Doc. 107) as stated herein, including Defendant Townsend's joinder (Doc. 109).

IT IS FURTHER ORDERED granting Defendant Powell's motion to dismiss (Doc. 144) as stated herein.

IT IS FURTHER ORDERED denying Plaintiff's motion to amend (Doc. 156), including any request to amend that is additional or different in her reply in support of the motion to amend (Docs. 167, 168, 169).

IT IS FURTHER ORDERED declining to exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 for Plaintiff's remaining state law claims.

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IT IS FURTHER ORDERED dismissing this matter without prejudice and directing the Clerk of Court to terminate this matter.

Dated this 22nd day of August, 2024.

Honorable Deborah M. Fine
United States Magistrate Judge