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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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JON-CORY SCHMIDT

NO. 2:10-CV-03022 FCD/EFB

Plaintiffs,

v.

MEMORANDUM AND ORDER

COUNTY OF NEVADA; NEVADA
COUNTY SHERIFF'S OFFICE; JAMES
BENNETT; and DOES 1-20
inclusive,

Defendants.

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This matter is before the court on the motion of defendants County of Nevada ("Nevada County"), Nevada County Sheriff's Office ("Sheriff's Office"), and James Bennet ("Bennett") (collectively, "defendants") to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure ("FRCP") 12(b)(6).¹ Plaintiff Jon-Cory Schmidt ("plaintiff") opposes the motion. For

¹ Defendants also moved for a more definitive statement under FRCP 12(b)(6). Because, as set forth below, defendants motion to dismiss is GRANTED, the court does not address the merits of this motion.

1 the reasons set forth below, defendants' motion to dismiss is
2 GRANTED.²

3 BACKGROUND

4 Plaintiff is the owner of a parcel of land located in Nevada
5 County. According to plaintiff, he "and nine other interested
6 parties were in lawful possession of medical cannabis
7 recommendations issued by licensed California Physicians."
8 (Pl.'s Compl. ["Compl."], filed Oct. 12, 2010 [Docket #1],
9 ¶ 14.) "Pursuant to those recommendations, they cultivated a
10 community or collaborative garden" consisting of eighty immature
11 marijuana plants on plaintiff's property. (Id.) Plaintiff
12 alleges that the marijuana plants were legally cultivated in
13 compliance with California Health & Safety Code § 11362.5 *et seq.*
14 (Id.)

15 In September 2009, defendant Bennet, a Nevada County
16 Sheriff, filed an affidavit with Nevada County Magistrate Judge
17 Catherine Heidelberger for purposes of obtaining a warrant to
18 search the premises of plaintiff's home. (Id. ¶ 15.) Judge
19 Heidelberger reviewed the affidavit, determined probable cause
20 existed, and issued the requested warrant. (Id.) On September
21 22, 2009, defendants executed the warrant, seizing at least
22 eighty immature marijuana plants growing on plaintiff's property.
23 (Id. at 16.) Defendants also seized various other marijuana-
24 related contraband, including ten pounds of already cultivated
25 marijuana. (Id.)

26
27 ² Because oral argument will not be of material
28 assistance, the court orders this matter submitted on the briefs.
E.D. Cal. L.R. 230(g).

1 Plaintiff then filed a motion for return of the marijuana
2 and other items seized pursuant to California Penal Code §§ 1539
3 and 1540 in California Superior Court for the County of Nevada.
4 (Pl.'s Opp'n ["Opp'n"], filed Feb 24, 2011 [Docket #21], at
5 2:20-22.) On December 1, 2009, plaintiff and his attorney
6 appeared before Judge Heidelberger for oral argument on the
7 motion. (Opp'n, Ex. 1.) After the hearing, Judge Heidelberger
8 issued a written order,³ denying the motion for return of the
9 marijuana. (Id.) The order explained that return of the
10 marijuana was not warranted because plaintiff did not have legal
11 possession. (Id.)

12 Plaintiff then petitioned for a writ of mandate, requesting
13 that the appellate division of the Nevada County Superior Court
14 vacate Judge Heidelberger's order. (Opp'n at 2:23-25.) On April
15 26, 2010, Superior Court Judge C. Anders Holmer issued a written
16 tentative order on the writ. (Id.) According to the court, "the
17 central issue [raised by the writ] was whether or not petitioner
18 was in lawful possession of the marijuana seized." (Defs.' Mtn
19 to Dismiss ["MTD"], filed Dec. 01, 2010 [Docket #8], Ex. 1.)
20 The court denied the writ, holding that pursuant to relevant
21 statutory and case law, plaintiff was not in legal possession of
22 the marijuana. (Id.) The court adopted the tentative ruling on
23 May 26, 2010. (Id.)

24 Plaintiff then filed this complaint, asserting four claims
25 for relief: (1) unlawful detention of personal property; (2)

26
27 ³ While the order denied the motion for return of the
28 marijuana and other related illegal substances, it required that
certain items seized by Nevada County be returned to plaintiff.
(Opp'n., Ex. A.)

1 declaratory relief; (3) damages for violation of equal protection
2 rights under 42 U.S.C. § 1983; and (4) conversion of personal
3 property against defendants. (Compl. ¶¶ 19-37.) Specifically,
4 plaintiff contends that defendants "have illegally seized such
5 medical marijuana through unlawful seizure, confiscation, and
6 impoundment." (Compl. ¶ 22.) Plaintiff alleges that the seizure
7 violated his constitutional rights by depriving him, without due
8 process of law, of eighty immature marijuana plants that
9 plaintiff asserts he lawfully possessed pursuant to California's
10 Compassionate Use Act. (Compl. ¶¶ 10-16.) Finally, plaintiff
11 alleges defendants "made unreasonable and illegal searches and
12 seizures . . . and deprived plaintiff of his rights, privileges,
13 and immunities as guaranteed by the Fourth and Fourteenth
14 Amendments to the United States Constitution." (Compl. ¶ 11.)

15 STANDARD

16 Under Federal Rule of Civil Procedure 8(a), a pleading must
17 contain "a short and plain statement of the claim showing that
18 the pleader is entitled to relief." See Ashcroft v. Iqbal, 129
19 S. Ct. 1937, 1949 (2009). Under notice pleading in federal
20 court, the complaint must "give the defendant fair notice of what
21 the claim is and the grounds upon which it rests." Bell Atlantic
22 v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations
23 omitted). "This simplified notice pleading standard relies on
24 liberal discovery rules and summary judgment motions to define
25 disputed facts and issues and to dispose of unmeritorious
26 claims." Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002).

27 On a motion to dismiss, the factual allegations of the
28 complaint must be accepted as true. Cruz v. Beto, 405 U.S. 319,

1 322 (1972). The court is bound to give plaintiff the benefit of
2 every reasonable inference to be drawn from the "well-pleaded"
3 allegations of the complaint. Retail Clerks Int'l Ass'n v.
4 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not
5 allege "'specific facts' beyond those necessary to state his
6 claim and the grounds showing entitlement to relief." Twombly,
7 550 U.S. at 570. "A claim has facial plausibility when the
8 plaintiff pleads factual content that allows the court to draw
9 the reasonable inference that the defendant is liable for the
10 misconduct alleged." Iqbal, 129 S. Ct. at 1949.

11 Nevertheless, the court "need not assume the truth of legal
12 conclusions cast in the form of factual allegations." United
13 States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th
14 Cir. 1986). While Rule 8(a) does not require detailed factual
15 allegations, "it demands more than an unadorned, the defendant-
16 unlawfully-harmed-me accusation." Iqbal, 129 S. Ct. at 1949. A
17 pleading is insufficient if it offers mere "labels and
18 conclusions" or "a formulaic recitation of the elements of a
19 cause of action." Twombly, 550 U.S. at 555; Iqbal, 129 S. Ct. at
20 1950 ("Threadbare recitals of the elements of a cause of action,
21 supported by mere conclusory statements, do not suffice.").
22 Moreover, it is inappropriate to assume that the plaintiff "can
23 prove facts which it has not alleged or that the defendants have
24 violated the . . . laws in ways that have not been alleged."
25 Associated Gen. Contractors of Cal., Inc. v. Cal. State Council
26 of Carpenters, 459 U.S. 519, 526 (1983).

27 Ultimately, the court may not dismiss a complaint in which
28 the plaintiff has alleged "enough facts to state a claim to

1 relief that is plausible on its face." Iqbal, 129 S. Ct. at 1949
2 (citing Twombly, 550 U.S. at 570). Only where a plaintiff has
3 failed to "nudge [his or her] claims across the line from
4 conceivable to plausible," is the complaint properly dismissed.
5 Id. at 1952. While the plausibility requirement is not akin to a
6 probability requirement, it demands more than "a sheer
7 possibility that a defendant has acted unlawfully." Id. at 1949.
8 This plausibility inquiry is "a context-specific task that
9 requires the reviewing court to draw on its judicial experience
10 and common sense." Id. at 1950.

11 In ruling upon a motion to dismiss, the court may consider
12 only the complaint, any exhibits thereto, and matters which may
13 be judicially noticed pursuant to Federal Rule of Evidence 201.
14 See Mir v. Little Co. Of Mary Hospital, 844 F.2d 646, 649 (9th
15 Cir. 1988); Isuzu Motors Ltd. v. Consumers Union of United
16 States, Inc., 12 F. Supp. 2d 1035, 1042 (C.D. Cal. 1998).

17 ANALYSIS

18 A. Collateral Estoppel

19 Defendants contend that the court must dismiss plaintiff's
20 claims⁴ for unlawful detention and conversion because the Nevada
21 County Superior Court, in two separate proceedings and two
22 written orders, determined that plaintiff was not in lawful
23 possession of the marijuana. ("MTD" at 4:4-5:10.) Specifically,
24 defendants contend that the doctrine of collateral estoppel bars

25
26 ⁴ Plaintiff's claims are laid out in the complaint as
27 follows: first cause of action: unlawful detention of personal
28 property; second cause of action: declaratory relief; third cause
of action: violation of the federal equal protection clause;
sixth cause of action: conversion. (Compl. ¶¶ 19-37.)
Plaintiff did not file a fourth or fifth claim.

1 plaintiff from re-litigating the issue of whether he was in
2 lawful possession of the marijuana, and thus, his claims for
3 unlawful detention and conversion, which require plaintiff to
4 demonstrate lawful possession, must be dismissed with prejudice.

5 State judicial proceedings receive the same full faith and
6 credit in every federal court as they would have in the courts of
7 the state in which the matter originated. 28 U.S.C. § 1783.
8 Section 1783 "directs a federal court to refer to the preclusion
9 law of the State in which judgment was rendered." Marrese v.
10 American Assoc. of Orthopaedic Surgeons, 470 U.S. 373, 380 (1985)
11 ("§ 1783 requires a federal court to look first to state
12 preclusion law in determining the preclusive effects of a state
13 court judgment"). Therefore, this court will apply California
14 law to determine whether the previous adjudications in California
15 Superior Court will preclude plaintiff from relitigating whether
16 he was in lawful possession of the marijuana.

17 In California, collateral estoppel precludes relitigation of
18 an issue previously adjudicated when the following elements are
19 satisfied:

20 First, the issue sought to be precluded from
21 relitigation must be identical to that decided in a
22 former proceeding. Second, this issue must have been
23 actually litigated in the former proceeding. Third, it
24 must have been necessarily decided in the former
25 proceeding. Fourth, the decision in the former
26 proceeding must be final and on the merits. Finally,
27 the party against whom preclusion is sought must be the
28 same as, or in privity with, the party to the former
proceeding.

Hernandez v. City of Pomona, 46 Cal. 4th 501, 513 (2009)
(internal citations omitted) (quoting Lucido v. Superior Court,
51 Cal. 3d 335, 341 (1990)).

1 Plaintiff argues that neither of the holdings by the Nevada
2 County Superior Court can be given preclusive effect because: (1)
3 the issue of lawful possession was not necessarily decided;⁵ (2)
4 the ruling by the magistrate on the motion for return of the
5 property was not final and on the merits because it was a
6 "special proceeding"; (3) the denial of the writ of mandamus was
7 not final and on the merits because it did not result in a
8 sufficient written decision; (4) California's public interest
9 exception applies to preclude the application of collateral
10 estoppel; and (5) applying collateral estoppel in this case would
11 violate due process.

12 **1. Necessarily Decided**

13 Plaintiff contends that the Superior Court judges' rulings
14 on the issue of lawful possession cannot have preclusive effect
15 because it was not necessarily decided. (Opp'n at 6:2-6.) An
16 issue is necessarily decided when two elements are satisfied:
17 (1) the issue was *actually* decided; and (2) the determination of
18 the issue was necessary to render a valid judgment on the merits
19 of the underlying proceeding. See Beechwood Restorative Care
20 Center v. Leeds, 436 F.3d 147, 153 (2d Cir. 2007).

21 In this case, both divisions of the Nevada County Superior
22 Court necessarily decided the issue of lawful possession. First,
23 the magistrate judge actually decided the issue on the motion for
24 return of the marijuana. Indeed, the court's written order
25 expressly provides that plaintiff was not in legal possession of

26
27 ⁵ Plaintiff does not dispute that the issue of whether he
28 lawfully possessed the marijuana was actually litigated, that the
issue is identical or that the party against whom preclusion is
sought is the same as the party to the former proceeding.

1 the marijuana. (Opp'n, Ex. 1.) Second, the determination of
2 lawful possession was necessary to render a final judgment on the
3 merits of the that motion. (See Id.) The court noted that
4 plaintiff "would be entitled to return of marijuana that was
5 lawfully cultivated and possessed . . . [however] there is no
6 evidence before the court to support his contention that all of
7 the marijuana was lawfully cultivated and possessed." (Id.)
8 Similarly, the Nevada County Superior Court, appellate division
9 actually and necessarily decided the same issue in ruling upon
10 plaintiff's petition for writ of mandate. The court explicitly
11 stated: "[t]he central issue [raised by the writ was] whether or
12 not petitioner was in lawful possession of the marijuana seized."
13 (MTD, Ex. 1 at 15.) The Appellate Division of The Superior Court
14 denied the petition, holding that "petitioner's possession [of
15 marijuana] greatly exceeded the legal limit." (Id.)

16 Therefore, the issue whether plaintiff was in lawful
17 possession of the marijuana at issue in this case was necessarily
18 decided in the negative on two separate occasions.⁶

19 /////

20 /////

22 ⁶ Plaintiff argues that the determination of whether he
23 lawfully possessed the marijuana was "arguably moot" because
24 Nevada County already destroyed the marijuana, and thus, the
25 court did not have power to return it. (Opp'n at 4:26.) First,
26 plaintiff proffers no evidence that the marijuana was actually
27 destroyed prior to judgment on the motion. Even if the state did
28 not have the power to return the marijuana, however, the issue of
lawful possession was necessary to the disposition of the
specific motion in question. Moreover, the issue of lawful
possession was the central issue to be determined on the petition
for writ of mandate and was therefore essential to the
disposition of that petition. Therefore, plaintiff's arguments
are without merit.

1 **2. Special Proceeding**

2 Plaintiff alleges that Judge Heidelberger's ruling on
3 plaintiff's motion for return of his property cannot be given
4 preclusive effect because plaintiff's motion was a "special
5 proceeding."

6 California courts have held that when a claim is brought in
7 litigation following a "special proceeding" that decided a
8 related issue, that claim is not necessarily barred by principles
9 of res judicata. See Mata v. City of Los Angeles, 20 Cal. App.
10 4th 141, 149 (1993); Knickerbocker v. City of Stockton, 199 Cal.
11 App. 3d 235, 245 (1988). In Mata, the court explained that a
12 petition for writ of mandamus is technically a special proceeding
13 for purposes of *claim preclusion*. Id. However, the court
14 explained that, notwithstanding the fact that a writ petition is
15 a special proceeding, "[t]he judgment in the mandamus proceeding
16 was not to be ignored" for purposes of *issue preclusion*. Mata,
17 199 Cal. App. 3d at 245. Under the doctrine of issue preclusion,
18 the judgment in a mandamus proceeding "operates as an estoppel or
19 conclusive adjudication as to such *issues* in the second action
20 that were actually litigated and determined in the first action."
21 (Id.) (internal citations omitted) (emphasis added). Therefore,
22 a special proceeding will have issue preclusive effect as long as
23 the elements of collateral estoppel are met.

24 As set forth above, the elements of collateral estoppel have
25 been met in this case; the precise issue of lawful possession was
26 previously litigated and conclusively determined in favor of
27 defendants in both the motion for return of the marijuana and the
28 writ proceeding. Therefore, the doctrine of collateral estoppel

1 bars plaintiff from relitigating the issue of lawful possession
2 in this action, regardless of whether issue was previously
3 determined in a "special proceeding."

4 **3. Written Decision**

5 Plaintiff contends the appellate division of the Nevada
6 County Superior Court's ruling on the writ application was not a
7 final judgment on the merits, and thus, cannot be given
8 preclusive effect. (Opp'n at 6:7-11.) Specifically, plaintiff
9 argues that "unless there is a written opinion issued following
10 the issuance of alternative writ, the denial of writ petition
11 does not have issue preclusive effect." Id. (emphasis omitted).

12 The issuance of an alternative writ will not be final and on
13 the merits, and thus will not have preclusive effect, unless
14 there is a sufficient writing explaining the basis for the
15 ruling. Gammoh v. City of Anaheim, 73 Cal. App. 4th 186, 196
16 (1999).

17 In this case, the appellate division of the Nevada County
18 Superior Court issued, in writing, a reasoned tentative ruling
19 explaining its basis for denying plaintiff's petition for writ of
20 mandate. (See MTD, Ex. 1.) This tentative ruling specifically
21 addressed and refuted each of plaintiff's arguments and, relying
22 on specific statutory and case law, explained why plaintiff was
23 not in lawful possession of the marijuana. (See MTD, Ex. 1.)
24 ("In [Chaves v. Superior Court], as here, petitioner's possession
25 greatly exceeded the legal limit.") That tentative ruling was
26 later adopted as the court's final decision. (Id.) As such, the
27 court's ruling on the petition for writ of mandamus was supported
28 by a written order setting forth the basis for its decision.

1 The cases cited by plaintiff in support of his assertion
2 that the writing in this case was not sufficient are
3 distinguishable. In Gammoh, the court did not attach preclusive
4 effect to a minute order that summarily denied a writ petition
5 for a preliminary injunction without explaining the basis for the
6 ruling on the merits. Gammoh, 73 Cal. App. 4th at 195 ("We have
7 never passed on the merits of Gammoh's argument; and Gammoh has a
8 right to appeal from the final judgment in this case and receive
9 a written statement of reasons for the court's decision").
10 Similarly, in Hoverstein v. Superior Court, 74 Cal. App. 4th 636
11 (1999), the court declined to give preclusive effect to the
12 summary denial of a writ decision that was not supported by any
13 written explanation. However, unlike the facts of both Gammoh
14 and Hoverstein, in which the courts provided no basis for their
15 rulings, the appellate division in this case issued a written
16 tentative ruling that was later adopted, which adequately
17 explained its basis for denying the petition.

18 Therefore, the appellate division's determination that
19 plaintiff was not in lawful possession of the marijuana was final
20 and on the merits.

21 **4. Public Interest Exception**

22 Plaintiff next contends that, even if the previous decisions
23 on the issue of lawful possession satisfy the elements of
24 collateral estoppel, the "public interest requires that re-
25 litigation [of the issue] not be foreclosed." (Opp'n at
26 6:25-27.) Specifically, plaintiff alleges that the public
27 interest trumps the application of collateral estoppel in this
28 case "[b]ecause the officer seizing the medical marijuana failed

1 to retain the property and seek a court order before its
2 destruction." (Opp'n at 8:13-15.)

3 "[W]hen the issue is a question of law rather than of fact,
4 the prior determination is not conclusive either if injustice
5 would result or if the public interest requires that relitigation
6 not be foreclosed." Sacramento v. State of California, 50 Cal.
7 3d 51, 64 (1990). Importantly, "[t]he public interest exception
8 is an extremely narrow one." Arcadia Unified Sch. Dist. v. State
9 Dep't of Educ., 2 Cal. 4th 251, 259 (1992). Indeed, the
10 California Supreme Court has emphasized the "it is the exception,
11 not the rule, and is only to be applied in exceptional
12 circumstances." Id. The public interest exception will only
13 apply when the specific issue affects the public interest at
14 large. See e.g., id. (holding that collateral estoppel does not
15 bar relitigation of the validity of a public school's statutory
16 authority to charge fees for pupil transportation); Sacramento,
17 50 Cal. 3d 51 (explaining that parties could relitigate whether
18 the State was required to subvent costs incurred by local
19 governments); Kopp v. Fair Political Practices Comm'n, 11 Cal.
20 4th 607 (1995) (finding that the exception applied to allow
21 relitigation of whether campaign financing provisions were
22 constitutional or could be rewritten to be constitutional).

23 Here, the resolution of this matter does not entail the kind
24 of broad sweeping policy matters in which courts will apply the
25 narrow public interest exception to ensure those types of salient
26 public matters receive sufficient judicial review. Rather,
27 plaintiff's claim does not implicate the interest of the public
28 at large in any regard – plaintiff's claim for conversion and

1 unlawful detention is a private action for damages resting on
2 allegations that his marijuana was improperly seized.⁷ Therefore,
3 California's public interest exception does not bar the
4 application of collateral estoppel in this case.

5 **5. Due Process**

6 Finally, plaintiff argues that the application of collateral
7 estoppel in this case violates due process. (Opp'n at 8:16-9:5.)
8 Specifically, plaintiff asserts: "it is clear that the plaintiff
9 was given no notice, nor opportunity, to object to the seizure of
10 his property by law enforcement officers."⁸ (Id. at 8:26-27.)

11 The Due Process Clause requires notice and an opportunity
12 for a hearing, appropriate to the nature of the case, before a
13 person is deprived of life, liberty, or property. Mullane v.
14 Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950).

15 Notice is required because "the right to be heard has little
16 reality or worth unless one is informed that the matter is
17 pending and can choose for himself whether to appear or default,
18 acquiesce or contest." Id. at 314. The due process requirement
19 of a hearing, does not, however, mean that in every civil case
20 there must be a hearing on the merits. See e.g., Boddie v.

21
22 ⁷ Plaintiff alleges that the marijuana was illegally
23 seized. However, plaintiff admits in his complaint that the
24 Nevada County officials obtained a valid warrant prior to
25 entering his property. (Opp'n at 2:9-12.) ("After due
consideration of the affidavits and petition, the Court issued
Search Warrant No. 2958 on September 14, 2009.").

26 ⁸ The court notes that whether the seizure of plaintiff's
27 contraband was consistent with due process is irrelevant to the
28 determination of whether the court can apply collateral estoppel
to determinations by the state court regarding whether plaintiff
was in lawful possession of the marijuana. Nevertheless, the
court discusses due process for the sake of completeness.

1 Connecticut, 401 U.S. 371, 378 (1971). It is well recognized
2 that the opportunity to be heard is one which must be granted "at
3 a meaningful time and in a meaningful manner." Armstrong v.
4 Manzo, 380 U.S. 545, 552 (1965).

5 Here, plaintiff was provided sufficient notice and
6 opportunity to litigate the question of whether he was in lawful
7 possession of the marijuana. First, plaintiff filed the motion
8 for return of the marijuana and was present in court, represented
9 by his attorney, during the hearing on the motion. (See Opp'n,
10 Ex. 1.) Second, plaintiff raised and argued the issue of lawful
11 possession of the marijuana before the appellate division of the
12 Nevada County Superior Court. Therefore, due process concerns
13 cannot preclude the application of collateral estoppel in this
14 case.

15 Plaintiff's claims for both unlawful detention and
16 conversion require plaintiff to show that he was in lawful
17 possession of the marijuana. Moore v. Regents of Univ. of Cal.,
18 51 Cal. 3d 120, 136 (Cal. 1990). Since two judges in two
19 proceedings have conclusively determined that plaintiff was not
20 in lawful possession of the marijuana, he is collaterally
21 estopped from relitigating that issue in this case. Therefore,
22 plaintiff cannot, as a matter of law, prevail on his claims for
23 unlawful detention and conversion. Accordingly, defendants
24 motion to dismiss plaintiff's first and sixth claims is GRANTED
25 without leave to amend.

26 **B. Section 1983**

27 Defendants contend that plaintiff's complaint fails to
28 allege facts sufficient to state a claim under Section 1983.

1 Specifically, defendants contend that plaintiff's allegation that
2 defendants "subjected [plaintiff] to insidious discrimination
3 with reference to various rules, codes, procedures[,] policies,
4 ordinances, and regulations of Nevada County" is insufficient to

5 Plaintiff's allegations amount to the kind of "unadorned,
6 the defendant-unlawfully-harmed-me accusation" that Federal Rule
7 of Civil Procedure 8(a) deems insufficient to state a viable
8 claim for relief. Iqbal, 129 S. Ct. at 1949. Without stating
9 specifically which "policies" defendants applied to plaintiff and
10 the manner in which those policies were "discriminatorily
11 applied," plaintiff's complaint fails to comply with the notice
12 pleading requirements set forth in Federal Rule of Civil
13 Procedure 8.

14 Therefore, defendant's motion to dismiss plaintiff's third
15 claim for relief is GRANTED with leave to amend.⁹

16 CONCLUSION

17 For the foregoing reasons, defendants' motion to dismiss is
18 GRANTED:

- 19 1. Defendants' motion to dismiss plaintiff's first claim
20 for relief for unlawful detention is GRANTED without
21 leave to amend.

24 ⁹ Plaintiff's second claim for declaratory relief
25 requires a sufficient showing that he has stated a viable claim
26 under one of his aforementioned theories of relief. Since the
27 court grants defendants' motion to dismiss each of the underlying
28 claims, the court does not reach the merits of plaintiff's second
claim for declaratory relief. To the extent that plaintiff can
amend his third claim for relief under Section 1983 to state a
viable claim, plaintiff may amend his claim for declaratory
relief based on that violation.

1 2. Defendants' motion to dismiss plaintiff's second claim
2 for relief for declaratory relief is GRANTED with leave
3 to amend.

4 3. Defendants' motion to dismiss plaintiff's third claim
5 for relief for violation fo the federal Equal
6 Protection Clause is GRANTED with leave to amend.

7 4. Defendants' motion to dismiss plaintiff's sixth claim
8 for relief for conversion is GRANTED without leave to
9 amend.

10 Plaintiff is granted fifteen (15) days from the date of this
11 order to file an amended complaint in accordance with this order.
12 Defendants are granted thirty (30) days from the date of service
13 of plaintiffs' first amended complaint to file a response
14 thereto.

15 IT IS SO ORDERED.

16 DATED: March 29, 2011



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE