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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TODD BROCKMAN,

v.

CITY OF MONTEREY, AARON
DELGADO, BRYCE MORGAN,
SABRINA PEREZ, and MAYHAR
ROOHBAKHSH,

Defendants.

Case No. 5:20-cv-03029-NC

**ORDER GRANTING
DEFENDANTS' MOTION
TO DISMISS; GRANTING
LEAVE TO AMEND**

Re: Dkt. No. 9

In this civil rights case, plaintiff Todd Brockman brings a complaint against the City of Monterey and four of its police officers stemming from a search of Brockman's home. Dkt. No. 1. Defendants move to dismiss three of Brockman's four claims under Rule 12(b)(6). Dkt. No. 9. Brockman voluntarily dismisses one of them. Finding that Brockman has failed to allege sufficient facts to plausibly plead the two remaining claims, the motion to dismiss is hereby GRANTED. Brockman is granted LEAVE TO AMEND the complaint to allege additional facts.

I. Background**A. Facts Alleged in the Complaint**

The following facts are alleged in the complaint. For the purposes of deciding this motion, the Court assumes them to be true. *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337 (2009).

In the middle of the night on May 3, 2019, the Monterey Police Department

1 received a call to its non-emergency line. Dkt. No. 1, Complaint, at ¶¶ 17, 21. The caller
2 was from an out-of-county area code but said that he lived at 29 Portola Avenue. Id. ¶ 23.
3 He told the emergency dispatcher that “there is some idiot over on Portola shooting a rifle
4 in their backyard,” and, when asked from which address the shots were fired, said, “I don’t
5 know, it’s close to like 30 Portola, somewhere, I am pretty sure.” Id. The caller described
6 the shots as coming from “right next door.” Id. The caller, stuttering and pausing,
7 identified himself as “Stan.” Id. ¶ 25. He said he would be waiting at home for the police
8 to arrive. Id. ¶ 27.

9 Twenty-five minutes later, officers responded to the call but found no answer and
10 no sign of activity at 29 Portola Avenue. Id. The officers then spoke with a resident of 22
11 Portola named John Brown, who reported having heard no gunshots that day. Id. ¶ 28.
12 John Brown told the officers that Todd Brockman lived at 30 Portola Avenue. Id. The
13 officers checked 29 Portola again, still got no answer, so proceeded to Todd Brockman’s
14 house at 30 Portola. Id. ¶ 29.

15 Brockman awoke around 1:00 a.m. to the sound of officers pounding on his door,
16 ringing his doorbell, shining flashlights into his windows, and demanding to be let inside.
17 Id. ¶ 17–18. He opened the door in his underwear. Id. ¶ 20. Officers told Brockman that
18 there had been a 911 call about gunshots fired at his address. Id. They instructed
19 Brockman to back up and get his dog, and Officer Morgan stepped into the house which
20 prevented Brockman from closing the front door. Id. ¶ 31. During this entire encounter,
21 the officers had their guns drawn. Id.

22 Officer Roohbakhsh asked Brockman if he owned a gun, and Brockman said that he
23 did not. Id. ¶ 33. Officer Morgan asked Brockman for ID and Brockman provided his
24 driver’s license number. Id. Sergeant Delgado insisted that the officers needed to search
25 the house and told Brockman to lead them downstairs. Id. ¶ 34. They searched
26 Brockman’s office, bedroom, closet, mattress, and dresser, and then searched the backyard,
27 a storage shed, and a guest house at the rear of the property occupied by two tenants. Id.
28 ¶¶ 35–37.

1 Brockman complained about the incident at a City Council meeting on May 15,
2 2018. Id. ¶ 38. Only after that meeting, on May 17, did any of the officers document the
3 incident in a police report. Id. ¶ 39. The report omits the fact that the officers drew their
4 weapons on Brockman and incorrectly states that Brockman consented to their entry and
5 search of his home. Id. A few days later, Lieutenant Michael Bruno tried to convince
6 Brockman to revise the statement he had made at the City Council meeting. Id. ¶ 40.

7 Brockman later pursued a restraining order against the caller who had claimed to
8 hear gunshots at his address. Id. ¶ 41. Through that process, Brockman requested the
9 officers' body-worn camera footage from the incident. Id. The City Attorney's Office
10 only provided some, but not all, of the BWC footage; additionally, the logs associated with
11 the footage contain evidence that the files had been tampered with. Id. ¶ 42.

12 **B. Procedural Background**

13 Plaintiff Todd Brockman brings this case against the City of Monterey and its
14 police officers Aaron Delgado, Bryce Morgan, Sabrina Perez, and Mayhar Roohbakhsh.
15 Dkt. No. 1. Brockman brings claims for (1) violation of his Fourth Amendment right to be
16 free from unreasonable search and seizure under 42 U.S.C. § 1983 against the individual
17 officer defendants; (2) violation of his Fourth and Fourteenth Amendment rights under 42
18 U.S.C. § 1983 against the City of Monterey; (3) violation of his Fourteenth Amendment
19 right to due process for deliberate fabrication of evidence under 42 U.S.C. § 1983 against
20 the individual officer defendants; and (4) conspiracy to violate his civil rights against the
21 individual officer defendants. Id.

22 Defendants move to dismiss Brockman's second, third, and fourth claims but do not
23 challenge his first claim. Dkt. No. 9. Brockman concedes that his second claim, based on
24 Monell liability against the City of Monterey, should be dismissed at this stage but requests
25 that it be without prejudice. Dkt. No. 18 at 4. The Court therefore dismisses that claim
26 and grants Brockman leave to amend it.

27 All parties consented to the jurisdiction of a magistrate judge under 28 U.S.C. §
28 636(c). See Dkt. Nos. 6, 11.

1 **II. Legal Standard**

2 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
3 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). On a
4 motion to dismiss, all allegations of material fact are taken as true and construed in the
5 light most favorable to the non-movant. *Cahill*, 80 F.3d at 337–38. The Court, however,
6 need not accept as true “allegations that are merely conclusory, unwarranted deductions of
7 fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th
8 Cir. 2008). A complaint need not give detailed factual allegations but must contain
9 sufficient factual matter, accepted as true, to “state a claim to relief that is plausible on its
10 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible
11 when it “allows the court to draw the reasonable inference that the defendant is liable for
12 the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). If a court grants a
13 motion to dismiss, the plaintiff should be given leave to amend unless the pleading could
14 not possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1127
15 (9th Cir. 2000).

16 **III. Discussion**

17 As mentioned previously, defendants do not move to dismiss Brockman’s first
18 claim for deprivation of his Fourth Amendment right to be free from unreasonable search
19 and seizure. Additionally, Brockman has agreed to dismiss his second claim, for
20 deprivation of his Fourth and Fourteenth Amendment rights under 42 U.S.C. § 1983
21 against the City of Monterey under a Monell theory of liability. The remaining claims are
22 Brockman’s third claim for deprivation of his Fourteenth Amendment right to due process,
23 fashioned in the complaint as for “deliberate fabrication of evidence,” and his fourth claim
24 for conspiracy to violate his civil rights, both against the individual officer defendants
25 only.

26 **A. Brockman’s Third Claim: Fourteenth Amendment Due Process**

27 In the complaint, Brockman titles his Fourteenth Amendment claim “Deliberate
28 Fabrication of Evidence.” Compl. at 14. He references the following alleged facts: the

1 defendants’ fabrication of the BWC logs; the officers’ omission of witness statements; and
2 the misrepresentation of whether Brockman had consented to the search of his home. Id. ¶
3 72. Brockman alleges that because of this evidence fabrication, he “was provided with
4 incomplete evidence and evidence that had been tampered with in response to his
5 subpoena duces tecum in the restraining order case he was pursuing in Monterey County
6 Superior Court.” Id. ¶ 74. The complaint then references an earlier damages section as to
7 the harm caused by the evidence fabrication. Id. ¶ 75. Those damages include
8 Brockman’s severe emotional and mental distress exhibited by nightmares, flashbacks,
9 anxiety, depression, PTSD diagnosis and subsequent treatment, and lost past and future
10 wages resulting from the PTSD. Id. ¶¶ 50–52.

11 For the first time, in his opposition to the defendants’ motion to dismiss, Brockman
12 describes this claim as: “interference with meaningful access to the courts.” Dkt. No. 18 at
13 7. He argues that “Defendants’ tampering with the evidence and submitting it to the
14 superior court in response to valid legal process interfered with [his] ability to litigate his
15 restraining order case and rendered his state court remedy ineffective.” Id. This appears to
16 the Court to be a different claim from the one described in the complaint.

17 The complaint contains very little information about the restraining order case—
18 such as what relief Brockman sought, or what resulted—and, most importantly, leaves out
19 any connection between the alleged evidence tampering and the presumably bad result that
20 Brockman obtained. If Brockman wishes to bring a claim for interference with his
21 meaningful access to the courts, then he must allege more facts to explain how his court
22 access was interrupted by the defendants in this case. He must also allege what harm
23 resulted from that interference, as his current damages pleading does not address his
24 restraining order case at all.

25 Before the Court can meaningfully assess the motion to dismiss the claim for
26 violation of Brockman’s due process rights, he must further clarify the substance of that
27 claim. The opposition to the motion to dismiss is not the appropriate avenue for bringing
28 new claims or modifying existing ones. See *Pirani v. Slack Techs., Inc.*, 2020 WL

1 1929241, at *4 (N.D. Cal. April 21, 2020) (citing *Lee v. City of Los Angeles*, 250 F.3d 668,
2 688–89 (9th Cir. 2001) (stating that “[a]s a general rule, courts may not consider beyond
3 the pleadings when ruling on a 12(b)(6) motion.”). Instead, Brockman should amend his
4 complaint. As such, the motion to dismiss the third claim is GRANTED; the claim is
5 DISMISSED; and Brockman is granted LEAVE TO AMEND.

6 **B. Brockman’s Fourth Claim: Conspiracy**

7 Brockman’s fourth claim is for conspiracy to violate his civil rights. In order to
8 plausibly state this claim, Brockman must first plausibly allege that his civil rights were
9 violated. The conspiracy claim is predicated on the underlying civil rights claim.
10 *Thornton v. City of St. Helens*, 425 F.3d 1158, 1168 (9th Cir. 2005). Brockman has
11 dismissed his second claim for violation of his civil rights under a Monell theory; the Court
12 has dismissed Brockman’s third claim for violation of his Fourteenth Amendment right to
13 due process. The only remaining viable civil rights claim that could form the basis of
14 Brockman’s conspiracy claim is his first claim, not challenged by the defendants in their
15 motion, for violation of his Fourth Amendment right to be free from unreasonable search
16 and seizure.

17 However, the language of the complaint indicates that Brockman does not intend to
18 frame his conspiracy claim in this way. Instead, the complaint’s description of his
19 conspiracy claim refers to the officers’ fabrication of documentation, concealment of
20 witness testimony, omission of witness statements, and destruction and alteration of BWC
21 footage. See Compl. at 16. These allegations suggest to the Court that Brockman is
22 predicated his conspiracy claim on his due process claim, not his search and seizure claim.
23 The opposition to the motion to dismiss corroborates this: Brockman argues there that
24 defendants “omitted material witness statements from their reports, materially altered
25 BWC footage, altered and fabricated BWC audit logs, and produced this altered evidence
26 to the Superior Court of California.” Dkt. No. 18 at 8.

27 Assuming that Brockman’s conspiracy claim is based on the officers acting in
28 concert to deprive him of his right to due process, the claim cannot survive because the due

1 process claim has been dismissed in this Order. If Brockman wishes to bring a conspiracy
2 claim on other grounds—such as predicated on the allegedly unreasonable search and
3 seizure—he may clarify that in an amended complaint. Accordingly, the motion to dismiss
4 the fourth claim is GRANTED; the claim is DISMISSED; and Brockman is granted
5 LEAVE TO AMEND.

6 **IV. Conclusion**

7 Brockman’s second claim against the City of Monterey for Monell liability is
8 hereby DISMISSED based on his concession in the briefing on this motion. Brockman’s
9 third claim for deprivation of due process is hereby DISMISSED for failure to allege
10 sufficient facts to state a plausible claim. Brockman’s fourth claim for conspiracy is also
11 DISMISSED insofar as it appears to be based on his due process claim.

12 Brockman is hereby granted LEAVE TO AMEND these claims. He may not add
13 any new claims or parties without further leave of Court. The amended complaint is due
14 by **September 18, 2020**. The defendants need not answer the surviving first claim for
15 unreasonable search and seizure until the amended complaint is filed, or until Brockman
16 indicates that he does not intend to file an amended complaint. If Brockman files no
17 claims against it in the amended complaint, the City of Monterey will be dismissed from
18 the case.

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20 **IT IS SO ORDERED.**

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22 Dated: August 19, 2020



NATHANAEL M. COUSINS
United States Magistrate Judge

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