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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARK A. APODACA,

Plaintiff,

v.

DEPUTY BRYAN WEIMER;
IMPERIAL COUNTY SHERIFF’S
DEPT.,

Defendants.

Case No.: 3:21-cv-01402-RBM-LR

**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS**

[Doc. 9]

On March 2, 2022, Defendants Bryan Weimer (“Defendant Weimer”) and Imperial County Sheriff’s Office (collectively, the “Defendants”) filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) (“Motion”). (Doc. 9.) Plaintiff Mark A. Apodaca (“Plaintiff”) filed an opposition on March 7, 2022. (Doc. 11.) Defendants filed a reply on April 8, 2022. (Doc. 12.) For the reasons discussed below, Defendants’ Motion is **GRANTED**.

I. BACKGROUND

Plaintiff filed his initial complaint against Defendants on August 4, 2021 (“Original Complaint”). (Doc. 1.) Plaintiff alleges that on November 18, 2015, he was at his mother’s house and heard loud knocking on the front door. (*Id.* at 2.) Plaintiff exited the house, and

1 Defendant Weimer asked whether Plaintiff was Marc Apodaca. (*Id.*) Plaintiff states that
2 Defendant Weimer “told [Plaintiff] he was [] there to issue Plaintiff a protective order.”
3 (*Id.*) Defendant Weimer then placed Plaintiff under arrest and took him to the county jail.
4 (*Id.*) Plaintiff’s prayer for relief requests \$25,000 for “damages caused by Defendant
5 Weimer and [h]is [d]epartment” and this amount “is for \$1,000 for every day [Plaintiff]
6 spent in [j]ail . . . plus [Plaintiff’s] attorney’s fees totaling \$3,500.” (*Id.* at 3.)

7 Also on August 4, 2021, Plaintiff filed a Motion to Proceed In Forma Pauperis (Doc.
8 2) and a Motion to Appoint Counsel (Doc. 3). On January 5, 2022, the Court issued an
9 order (1) granting Plaintiff’s Motion to Proceed In Forma Pauperis, and (2) dismissing
10 Plaintiff’s complaint without prejudice for failing to state a claim upon which relief can be
11 granted pursuant to 28 U.S.C § 1915(e)(2)(B)(ii). (Doc. 4.) In light of this ruling,
12 Plaintiff’s Motion to Appoint Counsel was also denied. (*Id.* at 3.) The Court’s January 5,
13 2022 order states that “[a]lthough Plaintiff sets out the facts of this encounter, the nature
14 of his legal claims is unclear. Absent clarification on those issues, Plaintiff’s Complaint is
15 subject to dismissal for failure to state a claim.” (*Id.* at 2.) Plaintiff was granted leave to
16 file an amended complaint curing the pleading deficiencies. (*Id.* at 3.) Plaintiff filed an
17 amended complaint on January 18, 2022 (“Amended Complaint”). (Doc. 5.) Defendants
18 subsequently filed the instant Motion on March 2, 2022. (Doc. 9.)

19 In the Motion, Defendants argue Plaintiff’s Amended Complaint “fails to state a
20 claim for which relief can be granted and is time barred by the applicable statute of
21 limitations.” (Doc. 9–1 at 5.)

22 II. LEGAL STANDARD

23 Pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6), an action may be
24 dismissed for failure to allege “enough facts to state a claim to relief that is plausible on its
25 face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial
26 plausibility when the plaintiff pleads factual content that allows the court to draw the
27 reasonable inference that the defendant is liable for the misconduct alleged. The
28 plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a

1 sheer possibility that a defendant acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
2 (2009) (internal citations omitted). For purposes of ruling on a Rule 12(b)(6) motion, the
3 Court “accept[s] factual allegations in the complaint as true and construe[s] the pleadings
4 in the light most favorable to the nonmoving party.” *Manzarek v. St. Paul Fire & Marine*
5 *Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

6 Moreover, when an action is filed by a pro se litigant, “the court must construe the
7 pleadings liberally and must afford plaintiff the benefit of any doubt.” *Karim-Panahi v.*
8 *Los Angeles Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). “A pro se litigant must be
9 given leave to amend his or her complaint unless it is ‘absolutely clear that the deficiencies
10 of the complaint could not be cured by amendment.’” *Noll v. Carlson*, 809 F.2d 1446,
11 1447 (9th Cir. 1987) (quoting *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir.
12 1980)). However, in giving liberal interpretation to a pro se complaint, courts may not
13 “supply essential elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of*
14 *the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). “Vague and conclusory allegations
15 of official participation in civil rights violations are not sufficient to withstand a motion to
16 dismiss.” *Id.*

17 III. DISCUSSION

18 A. Failure to State a Claim

19 Defendants allege that while they “still do not have fair notice as to what Plaintiff is
20 pleading, he has still failed to state a claim for which relief could be granted on any possible
21 cause of action which could be inferred from his Amended Complaint.” (Doc. 9–1 at 9.)
22 The only statement in Plaintiff’s Amended Complaint which could be construed as a cause
23 of action is that “[Defendant Weimer] than [sic] took me away to the County Jail to book
24 me, without any strong evidence that I committed any type of crime.” (Doc. 9–1 at 7
25 (quoting Doc. 5 at 2).) Defendants admit that “Courts are inclined to construe complaints
26 filed by pro per litigants liberally,” however, the Court may still dismiss a pro per complaint
27 “if it appears the Plaintiff can prove no set of facts in support of his claim which would
28 entitle him to relief.” (Doc. 9–1 at 9 (citing *Wilhem v. Rotman*, 680 F.3d 1113, 1121 (9th

1 Cir. 2012).) Defendants argue that “[h]ere, there are no set of facts which could lead to
2 relief for Plaintiff.” (Doc. 9–1 at 9.) Moreover, “in Plaintiff’s request for relief, he asks
3 for damages including \$1,000 a day for every day he was in jail as well as \$3,500 for
4 attorney’s fees but gives no basis as to how he calculated this demand.” (*Id.* at 8.)

5 *i. First Amendment*

6 In examining potential claims, Defendants explain that Plaintiff “asserts that he is
7 bringing this claim under the 1st Amendment, but Defendants are unsure how an alleged
8 false arrest could lead to a violation of the 1st Amendment.” (*Id.* at 8.) Plaintiff does not
9 allege any violation of the freedom of religion, speech, press, or assembly. (Doc. 9–1 at 8;
10 *see* Doc. 5.) The Court notes that Plaintiff’s Original Complaint and Amended Complaint
11 are nearly identical. (*See* Docs. 1, 5.) The Amended Complaint includes “1st Amendment”
12 in the caption, but there is no further mention of the claim. (*See* Doc. 5.) Therefore, the
13 Amended Complaint is insufficient to allege “enough facts to state a claim to relief that is
14 plausible on its face.” *Twombly*, 550 U.S. at 570. Thus, the Court finds Plaintiff fails to
15 state a claim as to a violation of the First Amendment.

16 *ii. False Imprisonment*

17 Moreover, “Plaintiff goes on to mention that his reputation was damaged in violation
18 of Cal. Penal Code section 236 for false imprisonment.” (Doc. 9–1 at 8 (citing Doc. 5 at
19 3).) False imprisonment is defined as “the unlawful violation of the personal liberty of
20 another.” CAL. PENAL CODE § 236 (West). Similarly, “the tort of false imprisonment
21 consists of the non-consensual, intentional confinement of a person, without lawful
22 privilege, for an appreciable length of time.” (Doc. 9–1 at 8 (citing *Fermino v. Fedco, Inc.*,
23 7 Cal. 4th 701, 715 (1994).) However, Defendants argue “there is no civil liability, and no
24 cause of action will arise against a police officer for false arrest or false imprisonment out
25 of any arrest which was lawful or if the police officer had reasonable cause to believe the
26 arrest was lawful.” (Doc. 9–1 at 8 (citing CAL. PENAL CODE § 847(b)(1)).) “A police
27 officer also has probable cause for a warrantless arrest if, given the facts known to him,
28 would lead to a person of ordinary care to believe, and have strong suspicion, that the

1 person is guilty of a crime.” (Doc. 9–1 at 8 (citing *Blankenhorn v. City of Orange*, 485
2 F.3d 463, 472 (9th Cir. 2007).)

3 The Amended Complaint does not include sufficient information for the Court to
4 conclude the arrest was unlawful, or that Plaintiff was subject to false imprisonment. (*See*
5 Doc. 5; *see also Ashcroft*, 556 U.S. at 678 (“[a] claim has facial plausibility when the
6 plaintiff pleads factual content that allows the court to draw the reasonable inference that
7 the defendant is liable for the misconduct alleged”).) Thus, Plaintiff’s Amended Complaint
8 is insufficient to allege a cause of action for false imprisonment.

9 *iii. Falsely Accused*

10 Plaintiff’s opposition alleges for the first time that he was “falsely accused on a
11 police report by a 3rd party person who was not a witness to any crime what so ever. The
12 3rd party person forced [Plaintiff’s] mother into making false statements under a [s]tressful
13 situation she did not ask for.” (Doc. 11 at 1.) Moreover, Plaintiff alleges Defendant
14 Weimer “used his position to [f]righten in [sic] elderly person into making statements that
15 were not possible for [Plaintiff] to comit [sic], without good credible evidence.” (*Id.*)
16 Again, Plaintiff’s claims are not supported by any legal authority, and Plaintiff does not
17 sufficiently state a cause of action. *See Twombly*, 550 U.S. at 570. In any event, when
18 “determining the propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the
19 complaint to a plaintiff’s moving papers, such as a memorandum in opposition to a
20 defendant’s motion to dismiss.” *Schneider v. California Dep’t of Corr.*, 151 F.3d 1194,
21 1197 (9th Cir. 1998).

22 Even accepting the factual allegations in the complaint as true and construing the
23 pleadings in the light most favorable to the nonmoving party, the Court finds Plaintiff has
24 failed to allege sufficient facts to state a claim to relief that is plausible on its
25 face. *Twombly*, 550 U.S. at 570; *Manzarek*, 519 F.3d at 1031.

26 B. Statute of Limitations

27 Lastly, Defendants allege that “[w]hile it is unclear what Plaintiff is pleading in his
28 Amended Complaint, any cause of action he could bring would be barred by the applicable

1 statute of limitations as his alleged ‘injury’ occurred on November 18, 2015.” (Doc. 9–1
2 at 9 (citing Doc. 1 at 7).) Plaintiff’s Original Complaint was filed on August 4, 2021,
3 almost six years after the alleged injury. (Doc. 9–1 at 9–10; *see* Doc. 1.) Defendants argue
4 that “[w]hile not pled as such, it appears that Plaintiff is attempting to file this action as a
5 civil action against a state actor under 42 § U.S.C. § 1983. In a section 1983 claim, federal
6 courts will look to state law to determine the applicable statute of limitations.” (Doc. 9–1
7 at 9 (citing *Wallace v. Kato*, 549 U.S. 384, 387-88 (2007).) “For a personal injury matter,
8 California has a two-year statute of limitations . . . California courts will use this two-year
9 statute of limitations for section 1983 claims as they are essentially tort claims.” (Doc. 9–
10 1 at 9 (citing Cal. Code Civ. Proc. § 335.1).) Since Plaintiff filed his Original Complaint
11 almost six years after the alleged injury on November 18, 2015, and his Amended
12 Complaint over six years after the alleged injury, his claims would be barred by the statute
13 of limitations under either complaint. (Doc. 9–1 at 9–10.)

14 Defendants’ argument regarding the statute of limitations is well taken. (*See* Doc. 9
15 at 9–10.) However, the Court is not inclined to find Plaintiff’s claims are time barred given
16 that the specific nature of the legal claims is unclear.

17 C. Leave to Amend

18 Courts will usually allow a pro se plaintiff to amend their complaint in order to
19 attempt to address the pleading deficiencies. *See Rosati v. Igbinoso*, 791 F.3d 1037, 1039
20 (9th Cir. 2015) (“[a] district court should not dismiss a pro se complaint without leave to
21 amend [pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)] unless ‘it is absolutely clear that the
22 deficiencies of the complaint could not be cured by amendment’”) (quoting *Akhtar v. Mesa*,
23 698 F.3d 1202, 1212 (9th Cir. 2012)). “The party opposing leave to amend bears the burden
24 of showing prejudice, futility, or one of the other permissible reasons for denying a motion
25 to amend.” *Pizana v. SanMedica Int'l LLC*, No. 118CV00644DADSKO, 2022 WL
26 1241098, at *9 (E.D. Cal. Apr. 27, 2022) (quoting *Clarke v. Upton*, 703 F. Supp. 2d 1037,
27 1041 (E.D. Cal. 2010); *Cervantes v. Zimmerman*, No. 17-CV-1230-BAS-NLS, 2019 WL
28 1129154, at *13 (S.D. Cal. Mar. 12, 2019)).

1 Defendants' only argument as to futility is that, in light of the statute of limitations,
2 "[a]mending the Complaint further would be futile because this would not change the fact
3 of when he first filed his claim." (Doc. 9–1 at 10.) In light of the Court's ruling *supra*, the
4 Court declines to label Plaintiff's claims as futile at this time and grants Plaintiff leave to
5 amend his complaint.

6 IV. CONCLUSION

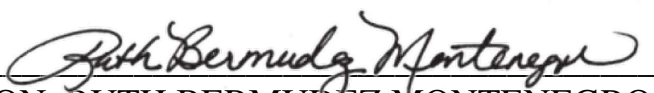
7 Based on the foregoing, the Court:

- 8 1. **GRANTS** Defendants' Motion. (Doc. 9.)
- 9 2. **DISMISSES** Plaintiff's Amended Complaint for failure to state a claim upon
10 which relief may be granted.
- 11 3. **GRANTS** Plaintiff thirty (30) days leave from the date of this Order in which
12 to file an amended complaint which cures all the deficiencies of pleading noted. Plaintiff
13 is specifically advised that his amended pleading must specifically detail the alleged
14 conduct and how such conduct violates federal or state law. Conclusory allegations
15 unsupported by specific allegations of fact are insufficient to properly comply with the
16 Federal Rules of Civil Procedure.

17 **If Plaintiff fails to file an amended complaint within the time provided, the**
18 **Court will enter a final order dismissing this civil action based both on Plaintiff's**
19 **failure to state a claim upon which relief can be granted and his failure to prosecute**
20 **in compliance with a court order requiring amendment.** *See Lira v. Herrera*, 427 F.3d
21 1164, 1169 (9th Cir. 2005) (“[i]f a plaintiff does not take advantage of the opportunity to
22 fix his complaint, a district court may convert the dismissal of the complaint into dismissal
23 of the entire action”).

24 **IT IS SO ORDERED.**

25 DATE: December 7, 2022

26 
27 HON. RUTH BERMUDEZ MONTENEGRO
28 UNITED STATES DISTRICT JUDGE