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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Raul Garzon,)

No. CV-10-8151-PHX-GMS

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Plaintiff,)

ORDER

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vs.)

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City of Bullhead, a municipal corporation;) Rodney Head, in his individual and official capacities as Chief of Police and Jane Doe Head, as husband and wife; Brian Williamson, in his individual and official capacities as Deputy Chief of Police and Donna Williamson, as husband and wife;) Paul Holstine, in his individual and official capacities and Patricia Holstine, as husband and wife; Charles English, in his individual and official capacities and Jane Joe English, as husband and wife; Tim Ernster, in his individual and official capacities as City Manager of Bullhead City and Jane Doe Ernster, and husband and wife; John Does I-X; ABC Partnerships I-X; Black Corporations I-X,)

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Defendants.)

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Pending before the Court is a Motion to Dismiss Count I of Plaintiff's Second Amended Complaint (Doc. 12) filed by Defendants. For the reasons set forth below, the motion is granted.

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BACKGROUND

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Plaintiff's Second Amended Complaint alleges the following. (Doc. 11). Plaintiff

1 **I. Motion to Dismiss**

2 **A. Legal Standard**

3 To survive dismissal for failure to state a claim pursuant to Federal Rule of Civil
4 Procedure 12(b)(6), a complaint must contain more than “labels and conclusions” or a
5 “formulaic recitation of the elements of a cause of action”; it must contain factual allegations
6 sufficient to “raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,
7 550 U.S. 544, 555 (2007). While “a complaint need not contain detailed factual allegations
8 . . . it must plead ‘enough facts to state a claim to relief that is plausible on its face.’”
9 *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Twombly*,
10 550 U.S. at 570). When analyzing a complaint for failure to state a claim under Rule
11 12(b)(6), “[a]ll allegations of material fact are taken as true and construed in the light most
12 favorable to the nonmoving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996).
13 However, legal conclusions couched as factual allegations are not given a presumption of
14 truthfulness, and “conclusory allegations of law and unwarranted inferences are not sufficient
15 to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

16 **B. Analysis**

17 “To state a claim for relief in an action brought under § 1983, [plaintiffs] must [allege]
18 that they were deprived of a right secured by the Constitution or laws of the United States,
19 and that the alleged deprivation was committed under color of state law.” *Am. Mfrs. Mut.*
20 *Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999). “Section 1983 ‘is not itself a source of
21 substantive rights,’ but merely provides ‘a method for vindicating federal rights elsewhere
22 conferred.’” *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*,
23 443 U.S. 137, 144, n.3 (1979)). “It is well settled that section 1983 ‘imposes liability for
24 violations of rights protected by the Constitution, not for violations of duties of care arising
25 out of tort law.’” *Johnson v. Barker*, 799 F.2d 1396, 1399 (9th Cir. 1986) (quoting *Baker*,
26 443 U.S. at 146).

27 In Count I of his Second Amended Complaint, Plaintiff cites to three different
28 constitutional violations committed by Defendants to establish Defendants’ liability under

1 42 U.S.C. § 1983. Plaintiff first alleges that his “constitutionally protected liberty interest
2 in his reputation” was violated by Holstine’s “false and defamatory statements of and about
3 Plaintiff.” (Doc. 11 at ¶¶ 92–93). This allegation is not sufficient to sustain a claim that
4 Plaintiff’s constitutionally protected liberty interest was violated. The Supreme Court has
5 held that “[a]ny harm or injury to [reputation], even where as here inflicted by an officer of
6 the State, does not result in a deprivation of any ‘liberty’ or ‘property’ recognized by state
7 or federal law”. *Paul v. Davis*, 424 U.S. 693, 712 (1976).

8 Plaintiff also alleges that he lost his “constitutionally protected property interest in his
9 job . . . without due process of law.” (*Id.* at ¶ 96). Plaintiff maintains that he was entitled to
10 “some kind of hearing before being terminated—a right to oral or written [sic] charges against
11 [him], an explanation of the employer’s evidence, and an opportunity to present their side[]
12 of the story.” (*Id.* at ¶ 97). Plaintiff alleges that he was denied these due process rights
13 because his “pre-termination hearing was a constitutionally deficient sham proceeding.” (*Id.*
14 at ¶ 98). However, “the failure to provide an impartial decisionmaker at the pretermination
15 stage, of itself, does not create liability, so long as the decisionmaker at the post-termination
16 hearing is impartial.” *Walker v. City of Berkeley*, 951 F.2d 182, 184 (9th Cir. 1991).
17 Although Plaintiff alleges that Sergeant Holstine and Chief Head were not impartial during
18 his pre-termination proceedings, Plaintiff does not allege that the post-termination hearing,
19 in which he was reinstated to his former position with back pay, was conducted by someone
20 other than an impartial decisionmaker. Thus, Plaintiff states no due process claim regarding
21 his “constitutionally protected property interest in his job” to this extent. (Doc. 11 at ¶ 96).

22 Plaintiff finally alleges that his “rights to procedural and substantive due process were
23 also violated” throughout the investigation and disciplinary proceedings because Defendants
24 failed to adhere to Bullhead City’s policies and procedures. (*Id.* at ¶ 99). Although he cites
25 several police department policies, Plaintiff only provides the language for Bullhead City
26 Police Department Policy AR 3–3 (3.06), which provides that “[t]he use of threats, offensive
27 language, promise of reward, or any denial of an employee’s rights is prohibited. Imposition
28 of punishment not in accordance with the provisions of this regulation is also prohibited.”

1 (*Id.* at ¶¶ 99–100). Nevertheless, to establish a due process claim, “under § 1983, [plaintiffs]
2 must [allege] that they were deprived of a right secured by the Constitution or laws of the
3 United States, and that the alleged deprivation was committed under color of state law.” *Am.*
4 *Mfrs. Mut. Ins. Co.*, 526 U.S. at 49–50. Plaintiff’s assertion that Defendants failed to follow
5 their own policies is not sufficient to allege that Defendants deprived Plaintiff of a right
6 protected by the Constitution or laws of the United States. As a general rule, a violation of
7 state law or procedures does not lead to liability under § 1983. *Campbell v. Burt*, 141 F.3d
8 927, 930 (9th Cir. 1998).

9 Plaintiff fails to allege enough facts to state a claim to relief because even viewing the
10 facts in Plaintiff’s Complaint in the light most favorable to him, none of the three violations
11 alleged by Plaintiff establish that he was deprived of any rights secured by the Constitution
12 or laws of the United States as required to state a § 1983 claim. *See Twombly*, 550 U.S. at
13 570. As Plaintiff has had three opportunities to properly bring a § 1983 claim, this Court, in
14 its discretion, dismisses Count I of Plaintiff’s Second Amended Complaint with prejudice
15 and denies Plaintiff leave to amend or re-plead. *See Foman v. Davis*, 371 U.S. 178, 182
16 (1962) (finding that “repeated failure to cure deficiencies by amendments previously
17 allowed” is grounds for denying leave for a Plaintiff to amend his complaint).

18 Generally, federal courts do not exercise supplemental jurisdiction over pendent state
19 law claims when the federal claim is dismissed. *See Carlsbad Tech. Inc. v. HIF Bio, Inc.*, 129
20 S.Ct. 1862, 1865 (2009) (holding that a district court has discretion in exercising
21 supplemental jurisdiction when the court has dismissed all claims over which it had original
22 jurisdiction); *see also* 28 U.S.C. § 1367(c)(3). Because Plaintiff fails to state a federal claim
23 upon which relief can be granted under 42 U.S.C. § 1983, and his remaining claims of false
24 light invasion of privacy, intentional infliction of emotional distress and defamation are all
25 state law claims, this Court dismisses Plaintiff’s state law claims, without prejudice, for lack
26 of jurisdiction.

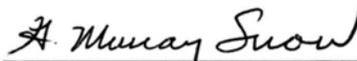
27 **IT IS THEREFORE ORDERED** that Defendants’ Motion to Dismiss Count I of
28 Plaintiff’s Second Amended Complaint (Doc. 12) is **GRANTED**.

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IT IS FURTHER ORDERED that Plaintiff's state law claims of false light invasion of privacy, intentional infliction of emotional distress and defamation are dismissed without prejudice for lack of jurisdiction.

IT IS FURTHER ORDERED directing the Clerk of the Court to terminate this action.

DATED this 8th day of August, 2011.



G. Murray Snow
United States District Judge