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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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| ANTHONY PHILLIPS COSME,<br>Plaintiff,<br>vs.<br>LASD, et al.,<br>Defendants. | Case No. CV 09-2363-CAS (DTB)<br><br>ORDER DISMISSING FIRST AMENDED COMPLAINT WITH LEAVE TO AMEND |

On February 3, 2009, plaintiff filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 in the United States District Court for the Southern District of California. The action subsequently was transferred to the Central District of California pursuant to 28 U.S.C. § 1406(a). On April 14, 2009, plaintiff was granted leave to proceed in forma pauperis. On July 13, 2009, the Court dismissed the Complaint with leave to amend. On September 16, 2009, plaintiff filed his First Amended Complaint ("FAC").

As he did in the Complaint, in the FAC, plaintiff names as defendants the Los Angeles County Sheriff's Department ("LACSD"), and two LACSD deputies, Deputy Chavez and Deputy West.[1] According to the allegations of the FAC, the gravamen of plaintiff's claims is that Deputies Chavez and West stopped plaintiff on December 4,

[1] Plaintiff named the County of Los Angeles as a defendant in the Complaint, but has not included it in the FAC.

2007, while plaintiff was driving a Range Rover that was registered to his wife. Plaintiff alleges violations of the Fourth Amendment and the Due Process Clause of the Fourteenth Amendment arising from his subsequent detention by the deputies as well as their search of his vehicle. Plaintiff purports to be seeking compensatory and punitive damages.

In accordance with the terms of the "Prison Litigation Reform Act of 1995" ("PLRA"), the Court now has screened the FAC prior to ordering service for purposes of determining whether the action is frivolous or malicious; or fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2).

The Court's screening of the FAC under the foregoing statute is governed by the following standards. A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). Since plaintiff is appearing pro se, the Court must construe the allegations of the FAC liberally and must afford plaintiff the benefit of any doubt. See Karim-Panahi v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). Moreover, in determining whether the FAC states a claim on which relief may be granted, its allegations of material fact must be taken as true and construed in the light most favorable to plaintiff. See Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). However, "a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. … Factual allegations must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007) (internal citations omitted); see also Ashcroft v. Iqbal, - U.S. -, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (To avoid dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim

to relief that is plausible on its face.' [citation omitted]. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.").

Based on its review and consideration of the allegations of the FAC under the relevant standards, it again appears to the Court that plaintiff's factual allegations may be sufficient to state claims under the Fourth Amendment against the two deputies. (See section III below.) However, the FAC suffers from the same general pleading deficiencies as those contained in the Complaint, which are discussed hereafter. Accordingly, the FAC is dismissed with leave to amend. See Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987) (holding that a pro se litigant must be given leave to amend his complaint unless it is absolutely clear that the deficiencies of the complaint cannot be cured by amendment).

**SUMMARY OF PLAINTIFF'S FACTUAL ALLEGATIONS**

Plaintiff alleges that he was pulled over by Deputies Chavez and West at around 8:10 p.m. on December 4, 2007. Plaintiff handed over his license and asked why he had been stopped. One of the deputies stated that "there have been several Range Rovers stolen in this area." (FAC at 5). Plaintiff informed the deputies that his Range Rover was not stolen and that it was registered to his wife, who had the same last name and address as did plaintiff. One of the deputies asked plaintiff if he could search the vehicle. Plaintiff refused, and the deputy ordered him out of the vehicle. Plaintiff complied. He alleges that the deputy then "quickly and forcefully detained" plaintiff by placing him in the back of the sheriff's car. (FAC at p. 5 attachment). The deputy soon returned to plaintiff where he sat in the sheriff's car and said that he had found a small bag of marijuana in plaintiff's vehicle. The deputy then began to search the vehicle fully by "climbing over [the] seats." Plaintiff yelled at the deputy to stop. The deputy asked plaintiff how to open the doors, and plaintiff explained. (FAC at p. 5 attachment).

The other deputy and plaintiff engaged in a five to ten minute argument about the basis for the search of the vehicle. The deputy told plaintiff that they believed that the vehicle was stolen and asked to call plaintiff's wife. Plaintiff refused repeatedly. The deputy became "loud and disrespectful" and demanded the number for plaintiff's wife. (FAC at p. 5 attachment).

Meanwhile, the other deputy continued to search the vehicle; he placed plaintiff's clothing on the street. (FAC at p. 5 attachment). Both deputies then proceeded to stand at either side of plaintiff's vehicle for "30 to 45 minutes" making and answering calls on plaintiff's cell phone. (FAC at p. 5 attachment). Plaintiff alleges that his wife called him, but the female deputy answered and his wife hung up, believing that she had reached the wrong number. (FAC at p. 5 attachment). The deputy called plaintiff's wife back and asked her "a lot of questions to confirm" that the vehicle was not stolen. (FAC at p. 5 attachment).

Plaintiff eventually was released and given a citation for possession of marijuana and violation of Cal. Vehicle Code § 5201(f) ("impaired" license plate). (FAC at p. 5 attachment and attached citation). Plaintiff alleges that both of the stated reasons on the citation "were untrue." (FAC at p. 5 attachment).

## DISCUSSION

### I. The FAC fails to comply with the pleading requirements of Federal Rule of Civil Procedure 8.

Fed. R. Civ. P. 8(a) requires that a complaint contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e)(1) further provides that "[e]ach averment of a pleading shall be simple, concise, and direct." See also Swierkiewicz v. Sorema, 534 U.S. 506, 122 S. Ct. 992, 998-99, 152 L. Ed. 2d 1 (2002) (holding that Federal Rule 8(a)'s simplified notice pleading standard applies to all civil actions, except those delineated in Rule 9(b)). As the Supreme Court has recently clarified, Rule 8(a) "requires a 'showing,' rather than a

blanket assertion, of entitlement to relief." Twombly, 127 S. Ct. at 1965. Although the court must construe a pro se plaintiff's complaint liberally, plaintiff nonetheless must allege a minimum factual and legal basis for each claim that is sufficient to give each defendant fair notice of what plaintiff's claims are and the grounds upon which they rest. See, e.g., Iqbal, 129 S. Ct. 1937; Brazil v. United States Dep't of the Navy, 66 F.3d 193, 199 (9th Cir. 1995); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991). Moreover, failure to comply with Rule 8 constitutes an independent basis for dismissal of a complaint that applies even if the claims in a complaint are not found to be wholly without merit. See McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996); Nevijel v. Northcoast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

Here, plaintiff's FAC fails to set forth a minimum factual and legal basis for his claims that is sufficient to give each defendant fair notice of the number of claims plaintiff is purporting to raise, the factual basis for each claim, the legal basis for each claim, and which claims plaintiff is purporting to raise against each defendant. Because plaintiff has failed to link any portion of his factual narrative to any specific claim, the Court is unable to discern the nature of plaintiff's federal civil rights claims. In order to comply with Rule 8, plaintiff must clearly and concisely set forth the factual and legal grounds for each civil rights violation that he is purporting to allege. Further, plaintiff must clearly specify which claims he is purporting to raise against which defendant. Specifically, although plaintiff names the LACSD as a defendant, he fails to make any specific allegations against this defendant in the body of his FAC. In addition, although plaintiff makes a passing reference to "search and seizure," he fails to specify the nature of his Fourth Amendment claim or claims. Plaintiff need not identify the precise statutory or constitutional source of a claim, but his allegations must be sufficient to "give the defendant fair notice of what the … claim is and the grounds upon which it rests." Twombly, 127 S. Ct. at 1964; see also Alvarez v. Hill, 518 F.3d 1152, 1157 (9th Cir. 2008).

Accordingly, due to plaintiff's failure to set forth a short and plain statement of

each of his civil rights claims against each defendant, the Court finds that plaintiff's FAC fails to comply with Fed. R. Civ. P. 8.

## II. Plaintiff's allegations are insufficient to state a federal civil rights claim against the LACSD, or the deputies in their official capacities.[2]

The Supreme Court has held that an "official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 166, 105 S. Ct. 3099, 87 L. Ed. 2d 114 (1985); see also Brandon v. Holt, 469 U.S. 464, 471-72, 105 S. Ct. 873, 83 L. Ed. 2d 878 (1985); Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991). Such a suit "is not a suit against the official personally, for the real party in interest is the entity." Graham, supra. Further, the Supreme Court has held that a local government entity such as the LACSD "may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is only when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell v. New York City Dep't of Social Services, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

Thus, the LACSD may not be held liable for the actions of the two LACSD deputies for allegedly subjecting plaintiff to an unconstitutional search and/or seizure unless "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers," or if the alleged constitutional deprivation was "visited pursuant to a governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels." Monell, 436

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[2] Plaintiff names Deputies West and Chavez as defendants in their individual as well as official capacities. (See FAC at 3).

U.S. at 690-91; see also Redman v. County of San Diego, 942 F.2d 1435, 1443-44 (9th Cir. 1991).

Here, plaintiff again does not purport to identify any policies, ordinances, regulations, customs or the like of the LACSD, the execution of which allegedly inflicted the constitutional injuries about which he is complaining. The Court therefore finds that the allegations of the FAC are insufficient to state a federal civil rights claim upon which relief may be granted against the LACSD, or Deputies Chavez and West in their official capacities.

## III. Plaintiff's factual allegations appear to be sufficient to state claims under the Fourth Amendment against the two deputies in their individual capacities.

A. To the extent that plaintiff may be purporting to allege that the deputies violated the Fourth Amendment by stopping his vehicle without reasonable suspicion, his allegations may be sufficient to state a claim.

"[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." See Illinois v. Wardlow, 528 U.S. 119, 123, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000) (citing Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1967)). "[A] law enforcement officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further." Hiibel v. Sixth Judicial Dist. Court, 542 U.S. 177, 185, 124 S. Ct. 2451, 159 L. Ed. 2d 292 (2004).

Here, accepting plaintiff's allegations of material fact as true and construing them in the light most favorable to plaintiff, the officers stopped plaintiff merely because "there have been several Range Rovers stolen in this area." (FAC at 5). This stated reason is insufficient to constitute a "reasonable suspicion," which requires that an officer "be able to articulate more than an inchoate and unparticularized suspicion

or hunch of criminal activity." See Wardlow, 528 U.S. at 123-24 (citing Terry 392 U.S. at 27, n.2) (internal quotation marks omitted); see also United States v. Colin, 314 F.3d 439, 442 (9th Cir. 2002) ("An officer's inferences must be grounded in objective facts and be capable of rational explanation." (internal quotation marks omitted)); United States v. Thomas, 211 F.3d 1186, 1191 (9th Cir. 2000) (an "unsupported hunch does not support a finding of reasonable suspicion").

Plaintiff, however, has attached to his FAC a copy of the citation that he alleges was given to him by the deputies. (See FAC at p. 5 attachment and citation attached). The citation attached reflects that plaintiff was cited for a violation of Cal. Vehicle Code § 5201(f), which provides in relevant part that "[a] covering shall not be used on license plates" except as specified in the statute. The citation indicates that plaintiff's license plate was obstructed in some visible manner. (See FAC, attachment ("impaired vis. of lic. plate")). Consequently, it appears that the deputies may have had a reasonable basis to stop plaintiff's vehicle based on their observation of a violation of the Cal. Vehicle Code. See, e.g., Whren v. United States, 517 U.S. 806, 810, 116 S. Ct. 1769, 135 L. Ed. 2d 89, (1996) ("As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."); United States v. Norris, 2009 WL 1144185 at *1, 2009 U.S. App. LEXIS 9130 at *2 (9th Cir. 2009) (holding that a crack in the windshield created a reasonable suspicion that defendant was driving in violation of the Cal. Vehicle Code, justifying an investigatory traffic stop) (now citable for its persuasive value pursuant to Ninth Circuit Rule 36-3).

In his FAC, plaintiff further alleges that the citation (for both the Vehicle Code violation and for possession of marijuana) was "untrue." (FAC at p. 5 attachment). Accordingly, it is not clear to the Court whether plaintiff is purporting to allege that the deputies had no reasonable basis to believe that plaintiff had committed a traffic violation at the time of the stop, or whether he is purporting to allege that the deputies used the observed traffic violation as a pretext to investigate their otherwise

impermissible suspicion that he was driving a stolen vehicle. If plaintiff is alleging a pretexual but observable vehicle code violation, his allegations are insufficient to state a claim under the Fourth Amendment. See Whren, 517 U.S. at 813-14 (subjective intent of officers is not relevant in inquiry of reasonable suspicion to justify a Terry stop); Scott v. United States, 436 U.S. 128, 138, 98 S. Ct. 1717, 56 L. Ed. 2d 168 (1978) ("subjective intent alone … does not make otherwise lawful conduct illegal or unconstitutional"). If, on the other hand, plaintiff is purporting to allege that there was in fact no observable vehicle code violation at the time that the deputies stopped and questioned him, his allegations arguably may be adequate to state a claim under the Fourth Amendment against the two deputies.

B. To the extent that plaintiff may be alleging that his continued detention after the stop violated the Fourth Amendment, his allegations may be sufficient to state a claim against the two deputies in their individual capacities.

In Arizona v. Johnson, 129 S. Ct. 781, 788, 172 L. Ed. 2d 694 (2009), the Supreme Court clarified (citing Muehler v. Mena, 544 U.S. 93, 100-101, 125 S. Ct. 1465, 161 L. Ed. 2d 299 (2005)) that:

> "An officer's inquiries into matters unrelated to the justification for the traffic stop, this Court has made plain, do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop."

Accordingly, the deputies' questioning of plaintiff on matters unrelated to the justification for the traffic stop does not require independent reasonable suspicion as long as the questioning did not unnecessarily prolong the stop. See United States v. Turvin, 517 F.3d 1097, 1103-04 (9th Cir. 2008); United States v. Mendez, 476 F.3d

1077, 1080-81 (9th Cir.) ("mere police questioning does not constitute a seizure unless it prolongs the detention of the individual, and, thus, no reasonable suspicion is required to justify questioning that does not prolong the stop" (internal quotation marks omitted)), cert. denied, 550 U.S. 946 (2007).

Here, however, once again accepting plaintiff's allegations of material fact as true and construing them in the light most favorable to plaintiff, plaintiff has alleged that the deputies detained him in the back of the patrol car for a period of perhaps an hour while they searched his vehicle, questioned him about the ownership of the vehicle, and made and received calls on his cell phone. Accordingly, although the deputies' inquiry into the ownership of the vehicle alone would not raise a claim of unlawful detention, plaintiff's allegations arguably may be sufficient to allege that the officers detained him longer than was necessary to conduct a diligent and reasonable investigation. See, e.g., Center for Bio-Ethical Reform, Inc. v. Los Angeles County Sheriff Dep't, 533 F.3d 780, 798 (9th Cir. 2008) (holding that a 75 minute detention following a Terry stop for a possible vehicle violation violated the Fourth Amendment where the deputies detained plaintiffs while investigating other grounds for charging them), cert. denied, 129 S. Ct. 903 (2009); Haynie v. County of Los Angeles, 339 F.3d 1071, 1077 (9th Cir. 2003) (holding that a 16-20 minute detention in back of police car in handcuffs was not an arrest because the actions were reasonable in completing the officer's investigation).

C. To the extent that plaintiff may be alleging that the search of his vehicle violated the Fourth Amendment, his allegations may be sufficient to state a claim against the two deputies in their individual capacities.

To the extent that plaintiff may be purporting to raise a claim based on the search of his vehicle, his allegations, accepted as true and construed in the light most favorable to plaintiff, may be sufficient to state a claim under the Fourth Amendment. The Supreme Court has held that a traffic stop alone does not authorize "the officer,

consistently [sic] with the Fourth Amendment, to conduct a full search of the car." Knowles v. Iowa, 525 U.S. 113, 114, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998); see also Arizona v. Gant, 129 S. Ct. 1710, 1714, 173 L. Ed. 2d 485 (2009) ("vehicle search incident to a recent occupant's arrest after the arrestee has been secured and cannot access the interior of the vehicle" is not authorized). As alleged by plaintiff, the deputies could have had no reasonable basis to believe that evidence of any criminal activity would be found in plaintiff's car, nor do the allegations reflect that plaintiff was "within reaching distance of the passenger compartment at the time of the search." Gant, 129 S. Ct. at 1723.

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If plaintiff still desires to pursue this action, he is ORDERED to file a Second Amended Complaint within thirty (30) days of the service date of this Order, remedying the deficiencies discussed above. The clerk is directed to send plaintiff a blank Central District civil rights complaint form, which plaintiff is encouraged to utilize.

If plaintiff chooses to file a Second Amended Complaint, it should bear the docket number assigned in this case; be labeled "Second Amended Complaint"; and be complete in and of itself without reference to the original Complaint, the FAC, or any other pleading, attachment or document.

**Plaintiff is admonished that, if he fails to timely file a Second Amended Complaint, the Court will recommend that the action be dismissed with prejudice on the grounds set forth above and for failure to diligently prosecute.**

DATED: October 23, 2009

DAVID T. BRISTOW
UNITED STATES MAGISTRATE JUDGE