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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KASEY GRAHAM,)	NO. CV 10-4618-RGK(E)
)	
Plaintiff,)	
)	
v.)	MEMORANDUM AND ORDER DISMISSING
)	
MR. OROZCO (LAPD), et al.,)	COMPLAINT WITH LEAVE TO AMEND
)	
Defendants.)	
)	
_____)	

For the reasons discussed below, the Complaint is dismissed with leave to amend. See 28 U.S.C. § 1915(e)(2)(B).

On June 30, 2010, Plaintiff, a detainee at the Metropolitan Detention Center, filed this pro se civil rights case pursuant to 42 U.S.C. section 1983. Defendants are five Los Angeles police officers, sued in their individual and official capacities.

Plaintiff alleges that the Defendants violated Plaintiff's rights under the Fourth and Eighth Amendments, allegedly by filing false charges against Plaintiff and subjecting Plaintiff to malicious

1 prosecution.¹ Plaintiff alleges that, on May 15, 2009, a Los Angeles
2 County Superior Court judge issued a search warrant containing
3 allegedly false statements, specifically, statements concerning
4 incidents that assertedly occurred after the court issued the warrant
5 (Complaint, p. 5). Plaintiff alleges that he did not commit any
6 crimes justifying his arrest or the issuance of a warrant (id.).
7 Plaintiff further alleges that, on July 14, 2009, the Superior Court
8 issued another search warrant containing allegedly false information.
9 Plaintiff asserts that the allegedly false charges have caused
10 Plaintiff to suffer "severe emotional distress and loss of enjoyment
11 of life," as well as psychological suffering affecting Plaintiff's
12 "physical stability and health concerns" (id.; attachment, p. 1).
13 Plaintiff seeks damages, an investigation and interview by "Federal
14 Internal Affairs," and "[n]egotiations" between the United States
15 Attorney and Plaintiff or his counsel in the criminal case.²

16
17 The official capacity claims against the individual Defendants
18 must be construed as claims against the City of Los Angeles. See
19 Kentucky v. Graham, 473 U.S. 159, 165-66 (1985). Plaintiffs may not
20 sue the City or any municipal entity on a theory of respondeat
21 superior, which is not a theory of liability cognizable under
22 42 U.S.C. section 1983. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1948
23 (2009); Polk County v. Dodson, 454 U.S. 312, 325 (1981); Gibson v.

24
25 ¹ Plaintiff's claims appear to relate to Plaintiff's
26 pending criminal prosecution in this Court in United States of
America v. Kasey Robert Graham, CR 09-1084-PSG.

27 ² The prayer of the Complaint mentions an "attached"
28 motion for appointment of counsel. However, no such motion is
attached to the Complaint.

1 County of Washoe, Nev., 290 F.3d 1175, 1185 (9th Cir. 2002), cert.
2 denied, 537 U.S. 1106 (2003). A municipal entity may be held liable
3 only if the alleged wrongdoing was committed pursuant to a municipal
4 policy, custom or usage. See Board of County Commissioners of Bryan
5 County, Oklahoma v. Brown, 520 U.S. 397, 402-04 (1997); Monell v. New
6 York City Department of Social Services, 436 U.S. 658, 691 (1978); see
7 also Gibson v. County of Washoe, Nev., 290 F.3d at 1185-87 (describing
8 "two routes" to municipal liability, where municipality's official
9 policy, regulation or decision violated plaintiff's rights, or
10 alternatively where municipality failed to act under circumstances
11 showing its deliberate indifference to plaintiff's rights). Plaintiff
12 must allege facts, not conclusions, to support his official capacity
13 claims. See Ashcroft v. Iqbal, 129 S. Ct. at 1949. The Complaint
14 contains no allegations supporting Plaintiff's official capacity
15 claims.

16
17 To the extent Plaintiff seeks damages for emotional distress,
18 Plaintiff has not alleged any specific physical injuries resulting
19 from the challenged actions as required to support a claim for mental
20 or emotional injury suffered while in custody. See 42 U.S.C.
21 § 1997e(e) ("No Federal Civil action may be brought by a prisoner
22 confined in a jail, prison, or other correctional facility, for mental
23 or emotional injury suffered while in custody without a prior showing
24 of physical injury."); 42 U.S.C. § 1997e(h) (defining "prisoner" to
25 include any person "detained in any facility who is accused of . . .
26 violations of criminal law"). Section 1997e(e) requires a showing of
27 more than a de minimis physical injury in order to recover damages for
28 emotional distress. Oliver v. Keller, 289 F.3d 623, 630 (9th Cir.

1 2002). Plaintiff's conclusory allegations that Defendants' actions
2 purportedly affected Plaintiff's "physical stability and health
3 concerns" do not suffice. See Ashcroft v. Iqbal, 129 S. Ct. at 1949;
4 see also Jackson, Jr. v. Monterey County Jail, 2008 WL 269472, at *4
5 (N.D. Cal. 2008) (conclusory allegations of physical injury are
6 insufficient).

7
8 To the extent Plaintiff seeks a federal "investigation" into
9 Plaintiff's allegations of police misconduct or an order compelling
10 the "US Attorney" to conduct "negotiations" with the defense in
11 Plaintiff's pending criminal case, the Complaint is insufficient. "In
12 our criminal justice system, the Government retains 'broad discretion'
13 as to whom to prosecute." Wayte v. United States, 470 U.S. 598, 607
14 (1985). "[A] private citizen lacks a judicially cognizable interest
15 in the prosecution or nonprosecution of another." Linda R. S. v.
16 Richard D., 410 U.S. 614, 619 (1973).

17
18 **ORDER**

19
20 The Complaint is dismissed with leave to amend. If Plaintiff
21 still wishes to pursue this action, he is granted thirty (30) days
22 from the date of this Order within which to file a First Amended
23 Complaint. The First Amended Complaint shall be complete in itself.
24 It shall not refer in any manner to any prior complaint. Plaintiff
25 shall not attempt to add additional parties without leave of Court.
26 See Fed. R. Civ. P. 21. Failure to file timely a First Amended
27 Complaint in conformity with this Memorandum and Order may result in
28 the dismissal of this action. See Simon v. Value Behavioral Health,

1 Inc., 208 F.3d 1073, 1084 (9th Cir.), amended, 234 F.3d 428 (9th Cir.
2 2000), cert. denied, 531 U.S. 1104 (2001), overruled on other grounds,
3 Odom v. Microsoft Corp., 486 F.3d 541 (9th Cir.), cert. denied, 128
4 S. Ct. 464 (2007) (affirming dismissal without leave to amend where
5 plaintiff failed to correct deficiencies in complaint, where court had
6 afforded plaintiff opportunities to do so, and where court had given
7 plaintiff notice of the substantive problems with his claims).

8
9 IT IS SO ORDERED.

10
11 DATED: July 7, 2010.

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15 R. CARY KLAUSNER
16 UNITED STATES DISTRICT JUDGE

17
18 PRESENTED this 2nd day of
19 July, 2010, by

20 _____/S/_____
21 CHARLES F. EICK
22 UNITED STATES MAGISTRATE JUDGE