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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MYFORD JENKINS,)	NO. CV 11-1025-DMG(E)
)	
Plaintiff,)	
)	
v.)	MEMORANDUM AND ORDER DISMISSING
)	
CITY OF LOS ANGELES, et al.,)	COMPLAINT WITH LEAVE TO AMEND
)	
Defendants.)	
)	
)	

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

BACKGROUND

Plaintiff, an inmate incarcerated at the Los Angeles County Jail, filed this civil rights action for damages pursuant to 42 U.S.C. section 1983 on February 7, 2011. Defendants are the City of Los Angeles, Los Angeles Police Chief Charlie Beck, and Los Angeles Police Officers Lockwood, Cruise and Castro. Plaintiff sues the individual Defendants in their individual and official capacities.

1 The Complaint appears to contain two claims for relief: a claim
2 alleging excessive force in violation of the Eighth Amendment and a
3 retaliation claim. Plaintiff alleges that, on August 22, 2010,
4 Plaintiff was walking down the street when Defendants Lockwood and
5 Cruise ordered Plaintiff to stop and place his hands on his head
6 (Complaint, p. 5). Officer Lockwood allegedly applied excessive force
7 to Plaintiff's right hand (*id.*). When Plaintiff allegedly
8 involuntarily "snatched" his hand away, Defendant Cruise allegedly
9 punched Plaintiff on the face with a clenched fist (*id.*). Defendant
10 Lockwood allegedly hyperextended Plaintiff's arm behind his back and
11 punched Plaintiff in the ribs (*id.*). Defendant Cruise allegedly
12 punched Plaintiff in the ribs, kicked Plaintiff in the legs and
13 tasered Plaintiff approximately five times with two taser guns (*id.*,
14 p. 5 & "Supporting Facts, etc.," first page). Plaintiff further
15 alleges that, while Plaintiff was lying in a hospital bed in
16 handcuffs, Defendant Castro assertedly punched Plaintiff in the face
17 with a clenched fist (*id.*, "Supporting Facts, etc.," first page).
18 Plaintiff allegedly suffered fractured ribs, a swollen eye, and
19 excruciating pain in his ribs, legs and upper body (*id.*).

20
21 Plaintiff also alleges that, when Plaintiff's sister arrived at
22 the jail to pick up Plaintiff's personal property, jail officials did
23 not give her Plaintiff's clothing (Complaint, "Claim 2, etc.").
24 Plaintiff alleges jail officials took Plaintiff's clothing in
25 retaliation for making allegations of police brutality against them
26 (*id.*).

27 ///

28 ///

1 **DISCUSSION**

2
3 The official capacity claim against the individual Defendants
4 must be construed as claims against the City. See Kentucky v. Graham,
5 473 U.S. 159, 165-66 (1985). Plaintiff may not sue the City on a
6 theory of *respondeat superior*, which is not a theory of liability
7 cognizable under 42 U.S.C. § 1983. Ashcroft v. Iqbal, 129 S. Ct.
8 1937, 1948 (2009); Polk County v. Dodson, 454 U.S. 312, 325 (1981);
9 Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1185 (9th Cir. 2002),
10 cert. denied, 537 U.S. 1106 (2003). A municipal entity may be held
11 liable only if the alleged wrongdoing was committed pursuant to a
12 municipal policy, custom or usage. See Board of County Commissioners
13 of Bryan County, Oklahoma v. Brown, 520 U.S. 397, 402-04 (1997);
14 Monell v. New York City Department of Social Services, 436 U.S. 658,
15 691 (1978). Plaintiff's conclusory allegation that the City "has a
16 history of hiring cops who violate citizens' constitution rights"
17 (Complaint, p. 3) is insufficient. See Ashcroft v. Iqbal, 129 S. Ct.
18 at 1949.

19
20 Plaintiff may not sue Police Chief Beck or any other supervisor
21 pursuant to 42 U.S.C. section 1983 on a theory of *respondeat superior*.
22 See Ashcroft v. Iqbal, 129 S. Ct. at 1948 ("Government officials may
23 not be held liable for the unconstitutional conduct of their
24 subordinates on a theory of *respondeat superior*"); Polk County v.
25 Dodson, 454 U.S. at 325. A supervisor "is only liable for his or her
26 own misconduct," and is not "accountable for the misdeeds of [his or
27 her] agents." Ashcroft v. Iqbal, 129 S. Ct. at 1948-49. Mere
28 knowledge of a subordinate's alleged misconduct is insufficient. *Id.*

1 at 1949.

2 It appears that Plaintiff may have been a jail detainee at the
3 time of the alleged incident. To the extent Plaintiff purports to
4 allege claims under the Eighth Amendment, the Complaint is
5 insufficient. The Eighth Amendment's prohibition against cruel and
6 unusual punishment applies only after conviction. Pierce v. Multnomah
7 County, Oregon, 76 F.3d 1032, 1042 (9th Cir.), cert. denied, 519 U.S.
8 1006 (1996).¹

9
10 To the extent Plaintiff alleges any Defendant violated
11 Plaintiff's rights assertedly by causing Plaintiff to be deprived of
12 his property, the Complaint alleges no cognizable claim for relief.
13 Plaintiff appears only to allege a random and unauthorized property
14 deprivation, which does not constitute a denial of due process if
15 state law provides an adequate post-deprivation remedy. Hudson v.
16 Palmer, 468 U.S. 517, 533 (1984). California law provides an adequate
17 post-deprivation remedy for random and unauthorized property
18 deprivations. See Barnett v. Centoni, 31 F.3d 813, 817 (9th Cir.
19 1994).

20
21 To state a claim for retaliation, Plaintiff "must allege that he
22 was retaliated against for exercising his constitutional rights and
23 that the retaliatory action does not advance legitimate penological
24 goals, such as preserving institutional order and discipline." Bruce
25 v. Ylst, 351 F.3d 1283, 1288 (9th Cir. 2003) (citations and internal

26
27 ¹ However, the same standards apply to pretrial detainees
28 under the Due Process Clause. See Simmons v. Navajo County,
Ariz., 609 F.3d 1011, 1017 (9th Cir. 2010); Lolli v. County of
Orange, 351 F.3d 410, 418-19 (9th Cir. 2003).

1 quotations omitted). Plaintiff's conclusory allegations of
2 retaliation are insufficient. See Wise v. Washington State Dep't of
3 Corrections, 244 Fed. App'x 106, 108 (9th Cir. 2007), cert. denied,
4 552 U.S. 1282 (2008) (prisoner's conclusory allegations of retaliation
5 insufficient).

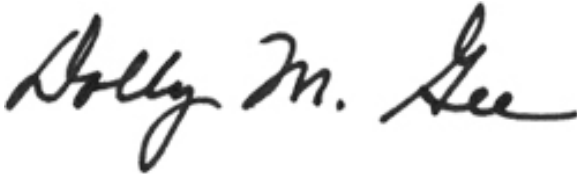
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7 **CONCLUSION AND ORDER**
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9 The Complaint is dismissed with leave to amend. If Plaintiff
10 still wishes to pursue this action, he is granted thirty (30) days
11 from the date of this Order within which to file a First Amended
12 Complaint. The First Amended Complaint shall be complete in itself.
13 It shall not refer in any manner to any prior complaint. Plaintiff
14 may not add Defendants without leave of Court. See Fed. R. Civ. P.
15 21. Failure to file a timely First Amended Complaint in conformity
16 with this Memorandum and Order may result in the dismissal of this
17 action. See Paqtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir.
18 2002), cert. denied, 538 U.S. 909 (2003) (court may dismiss action for
19 failure to follow court order); Simon v. Value Behavioral Health,
20 Inc., 208 F.3d 1073, 1084 (9th Cir.), amended, 234 F.3d 428 (9th Cir.
21 2000), cert. denied, 531 U.S. 1104 (2001), overruled on other grounds,
22 Odom v. Microsoft Corp., 486 F.3d 541 (9th Cir.), cert. denied, 552
23 U.S. 985 (2007) (affirming dismissal without leave to amend where
24 plaintiff failed to correct deficiencies in complaint, where court had
25 afforded plaintiff opportunities to do so, and where court had given
26 plaintiff notice of the substantive problems with his claims); Plumeau
27 v. School District #40, County of Yamhill, 130 F.3d 432, 439 (9th Cir.
28 1997) (denial of leave to amend appropriate where further amendment

1 would be futile).

2
3 IT IS SO ORDERED.

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5 DATED: March 3, 2011

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DOLLY M. GEE
UNITED STATES DISTRICT JUDGE

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12 PRESENTED this 9th day of
13 February, 2011, by:

14
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_____/S/_____
16 CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE