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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FRANCIS GUEVARA, Plaintiff, v. COUNTY OF LOS ANGELES, ELIZABETH GROVER, TONY-PAYAM KADE, CITY OF LOS ANGELES, IVAN McMILLAN, IGNACIO ARGUELLES, Defendants.	Case No. CV 14-08120 DDP (MANx) **ORDER DENYING COUNTY DEFENDANT'S MOTION TO DISMISS** [Dkt. No. 24]

Presently before the Court is Defendant County of Los Angeles' Motion to Dismiss as to Plaintiff's Fourth Cause of Action, based on a "*Monell*" theory of liability. (Dkt. No. 24.) Having heard oral arguments and considered the parties' submissions, the Court adopts the following order denying the motion.

I. BACKGROUND

On October 22, 2012, two LAPD police officers investigated allegations of child abuse. (First Amended Complaint ("FAC"), ¶ 31.) The allegations involved one of Plaintiff's two daughters. (Id.) She had disclosed to a school official that her father's

friend had "inappropriately touched her." (Id.) After interviewing the child at her school, the officers decided to take the child and her sister to the police station. (Id. at ¶¶ 32-35.) Plaintiff was out of town at the time. (Id. at ¶ 30.)

After interviews with the children's grandmother, the girls, Plaintiff, and the suspect, case workers for the County decided to take the children into protective custody. (Id. at ¶ 50.) They were held by the County for three days, until a juvenile court released them back into Plaintiff's custody. (Id. at ¶ 55.)

Plaintiff filed a Complaint (and later the FAC) alleging civil rights violations under 42 U.S.C. § 1983, including a *Monell* claim[1] of liability on the part of the County for a policy or practice of removing children from their family homes without exigent circumstances. The County moves to dismiss the *Monell* claim – Plaintiff's Fourth Cause of Action – for failure to state a claim.

II. LEGAL STANDARD

In order to survive a motion to dismiss for failure to state a claim, a complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 55 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint must include "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). When considering a Rule 12(b)(6) motion, a court must "accept as true all allegations of material fact and must construe those facts in

[1]See Monell v. New York City Dep't of Social Servs., 436 U.S. 658 (1978).

the light most favorable to the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000).

III. DISCUSSION

A plaintiff alleging civil rights violations under 42 U.S.C. § 1983 may not state a claim against a government entity for the actions of the entity's employees; only the actions of the entity itself give rise to liability. Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 691 (1978) ("[W]e conclude that a municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory."). However, a government entity *can* be held liable for "constitutional deprivations visited pursuant to governmental 'custom' even though such a custom has not received formal approval through the body's official decisionmaking channels." Id. at 690-91.

Plaintiff alleges just such an informal government custom in its Fourth Cause of Action, captioned "*Monell* Liability – Removal [Plaintiff v. County]." (FAC at 27.) The cause of action stated is that "Defendant COUNTY . . . established and/or followed policies, procedures, customs, and/or practices . . . which policies were the cause of violation of Plaintiff's constitutional rights." (Id. at ¶ 75.) More specifically, the FAC alleges that the County has a policy of "detaining and/or removing children from their parents without exigent circumstances (imminent danger of serious bodily injury), warrant, court order and/or consent of their parents." (Id.) It further alleges that "COUNTY has developed a long standing practice of removing children without a warrant . . . when the risk of harm to a child is not so imminent

as to have insufficient time within which to obtain a warrant." (Id. at ¶ 12.) It further alleges that the County did not provide adequate training for its employees in parents' constitutional rights, the use of protective custody warrants, or federal case law regarding "warrantless removals, exigency, least intrusive means, and . . . proper investigation." (Id. at ¶ 78.)

These allegations are enough to state a claim. They are not merely "a formulaic recitation of a cause of action's elements." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545 (2007). They allege specific policies on the part of the County. It may be that there is no proof of the existence of such policies, but that is a question for the merits phase of the litigation; as allegations, they do state a claim for relief.

Defendants would like the Court to follow the example of another recent Central District decision in Alberici v. Cnty. of Los Angeles, No. CV12-10511-JFW-VBK (April 15, 2013) (order granting in part defendant's motion to dismiss). There the court dismissed a *Monell* claim against the County because:

> [A]fter numerous amendments to their Complaint, Plaintiffs have still failed to identify any specific, formal policy, practice, or custom of either the County of Orange or the County of Los Angeles that may have resulted in a violation of Plaintiffs' civil rights . . . . Instead, Plaintiffs simply list various, non-specific, generic, and conclusory "policies" purportedly followed by the County of Orange and the County of Los Angeles, such as "the policy of detaining and/or removing children from their family and homes without exigent circumstances" . . . that allegedly led to the violation of

> Plaintiffs' civil rights . . . . Plaintiffs . . . fail to include any names of or policy numbers for these alleged policies . . . .

Id. at 5.

The Court respectfully disagrees with the rationale applied in Alberici. It is not necessary, at the pleadings stage, to be able to identify with particularity the "who, what, where, when, and how" of a claim. Twombly, 550 U.S. at 569 & n.14 (pleading with heightened particularity not required by Rule 8). What is necessary is simply enough to put the defendant on notice as to the theory of liability and to state a plausible claim for relief. Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). Here, the County is on notice as to plaintiff's theory: that the County has "established" a policy, custom, or practice of removing children from homes without a warrant even when the circumstances would allow officials to obtain a warrant. That is either true or it is not. If it is true, it would plausibly give rise to a constitutional violation.

Moreover, the practice need not have an official name, number, or designation. As the Monell Court explained, the very language of § 1983 allows for a claim based on practices that are not explicitly adopted or named:

> [A]lthough the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person," by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental

"custom" even though such a custom has not received formal approval through the body's official decisionmaking channels. As Mr. Justice Harlan, writing for the Court, said in Adickes v. S. H. Kress & Co.: "Congress included customs and usages [in § 1983] because of the persistent and widespread discriminatory practices of state officials . . . . Although not authorized by written law, such practices of state officials could well be so permanent and well settled as to constitute a 'custom or usage' with the force of law." Monell, 436 U.S. at 690-91 (citation omitted). Indeed, it would eviscerate § 1983 protections as against local governments if liability could be avoided by not giving a policy an official name or number.

The order in Alberici also cites to City of Oklahoma City v. Tuttle for the proposition that an allegation of a "nebulous 'policy' of 'inadequate training' on the part of the municipal corporation" cannot support a *Monell* claim. 471 U.S. 808, 823 (1985). The Court finds the citation inapposite. In Tuttle, the question was actually whether the trial court could issue *jury instructions* that allowed the jury to *infer* inadequate training from a single officer's behavior. Id. Thus, it tells us little about pleading standards.[2]

A better analysis of the pleading standard for municipal policies and customs is provided by the court in Thomas v. City of Galveston, Texas, 800 F. Supp. 2d 826 (S.D. Tex. 2011). The Thomas

[2]Tuttle was, in any event, a plurality opinion that was drastically limited by another decision a year later. See Collins v. City of San Diego, 841 F.2d 337, 341 (9th Cir. 1988) (noting the Supreme Court's change in direction).

court noted that district courts had split on the level of specificity required in *Monell* claim pleading after Twombly and Iqbal. Id. at 841-42. However, the court identified a reasonable approach to *Monell* pleading that took account of both Twombly/Iqbal and the evidentiary disadvantage plaintiffs usually find themselves at:

> Iqbal instructed that "[d]etermining whether a complaint states a plausible claim for relief" is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." In the context of municipal liability, as opposed to individual officer liability, it is exceedingly rare that a plaintiff will have access to (or personal knowledge of) specific details regarding the existence or absence of internal policies or training procedures prior to discovery. Accordingly, only minimal factual allegations should be required at the motion to dismiss stage. Moreover, those allegations need not specifically state what the policy is, as the plaintiff will generally not have access to it, but may be more general . . . .
>
> Allegations that provide [adequate] notice could include, but are not limited to, *past incidents of misconduct to others*, multiple harms that occurred to the plaintiff himself, misconduct that occurred in the open, the involvement of multiple officials in the misconduct, or *the specific topic of the challenged policy or training inadequacy*. Those types of details . . . help to satisfy the requirement of providing not

only fair notice of the nature of the claim, but also grounds on which the claim rests.

Id. at 842-44 (internal quotation marks omitted) (citations omitted) (emphases added).

In this case, Plaintiff has alleged facts in at least two categories identified by the Thomas court. First, he has alleged inadequate training, not just generally, but as to specific topics – in this case, the Fourth and Fourteenth Amendment rights of parents, the use of protective custody warrants, and federal case law regarding "warrantless removals, exigency, least intrusive means, and . . . proper investigation." (FAC at ¶ 78.) An allegation of inadequate training as to *specific topics* is enough to state a claim. Compare Zamudio v. Cnty. of Los Angeles, No. CV 13-895 ABC (PJWx), 2013 WL 3119178, at *3 (C.D. Cal. May 16, 2013) (holding pleading inadequate because "the Court is left in the dark as to whom Plaintiff alleges was inadequately trained and as to what training she believes they should have received"), with Miller v. City of Plymouth, No. 2:09-CV-205 JVB, 2010 WL 1474205, at *6 (N.D. Ind. Apr. 9, 2010) (holding pleading adequate where plaintiff alleged "failure to train [police officers] regarding a proper search of a vehicle").

Second, the Thomas court suggested, Plaintiff's allegation of a policy, custom, or practice may be bolstered by allegations of past incidents of similar "misconduct to others." Thomas, 800 F.Supp.2d at 843. This accords with the Ninth Circuit's repeated holding that "a custom or practice can be inferred from widespread practices or evidence of repeated constitutional violations for which the errant municipal officers were not discharged or

reprimanded." Hunter v. Cnty. of Sacramento, 652 F.3d 1225, 1233 (9th Cir. 2011). Defendants argue that "other cases are irrelevant as to whether a *Monell* violation has occurred in this case." (Reply at 2.) The Court disagrees. As another judge in this district has stated with regard to a similar motion to dismiss,

> Plaintiffs have, by virtue of identifying the cases cited in paragraph 65, made an allegation . . . that those cases support the conclusion that the County has a policy, practice, or custom of removing children from their parents without a warrant or other judicial authorization. This is a factual, non-conclusory allegation . . . .

Edwards v. Cnty. of Los Angeles, No. CV 14-01705 GW (MANx), slip op. at 3 (Nov. 13, 2014) (order granting in part and denying in part motion to dismiss); see also id. at n.3 (suggesting that Plaintiff's collection of cases was on a spectrum of acceptable means of alleging practice or custom, along with academic studies and newspaper reports). Similarly, the Court here finds that Plaintiff's reference to other cases is in the nature of an allegation that those cases show a policy, custom, or practice of removing children from the home without warrants or exigent circumstances, and that allegation, coupled with reasonably specific language in the general allegations, is enough to state a claim.

Defendants' final argument is that Plaintiff's *Monell* claim is just a *respondeat superior* claim dressed up, because "no facts are pled supporting [a claim that] the County has a 'policy' or 'practice' of unlawful warrantless removals." (Mot. Dismiss at 10.) For all the reasons stated above, the Court disagrees.

Plaintiff has made sufficient allegations that the County has such a policy.

IV. CONCLUSION

The Motion to Dismiss is hereby DENIED.

IT IS SO ORDERED.

Dated: January 15, 2015

DEAN D. PREGERSON
United States District Judge