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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

TRAVIS CHARLES BROWN,)	No. CV 15-02613-RGK (VBK)
)	
Plaintiff,)	MEMORANDUM AND ORDER DISMISSING
)	COMPLAINT WITH LEAVE TO AMEND
v.)	
)	
CITY OF LONG BEACH, et al.,)	
)	
Defendants.)	
)	
)	

PROCEEDINGS

On April 8, 2015, Travis Charles Brown (hereinafter referred to as "Plaintiff") filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff named the following Defendants: City of Long Beach; Long Beach Police Department; County of Los Angeles (all of the above in their official capacities) (Complaint at 3.¹); Long Beach Police Officer Bernard Barajas; Long Beach Police Officer Lorenzo Uribe; Police Officer Association Attorney Jim Trott; Long Beach Police Lt. L. Cox; Long Beach Police Commander D. Wood; Long Beach Police Sgt. E. Herzog; Long Beach Police Department Peer Officer R. Solorio; Long

¹ The Court will refer to the pagination used in the CM/ECF Docket.

1 Beach Police Department Peer Officer H. Vong, all in their individual
2 capacities. (Id. at 4-5.)

3 On June 19, 2014, Plaintiff alleges that Defendants Uribe and
4 Barajas were working patrol in an unmarked vehicle. Plaintiff is a
5 student at Long Beach City Community College. (Id. at 6.) Plaintiff
6 alleges Defendants Uribe and Barajas engaged in the practice of
7 racially profiling African-American males. (Id.) Plaintiff alleges
8 Defendants Uribe and Barajas detained Plaintiff, with their service
9 weapons drawn, in violation of the Fourth Amendment. Plaintiff alleges
10 he provided Defendants with his identification and then became nervous
11 as Defendants used "racial slurs." Plaintiff then ran towards his
12 classroom for safety. (Id.)

13 Plaintiff alleges that he was "shot in the buttocks" by Defendant
14 Uribe and the bullet cannot be removed or else Plaintiff could end up
15 permanently disabled. (Id. at 7.) To cover up the criminal acts
16 committed by Defendant Officers Uribe and Barajas, Plaintiff alleges
17 the remaining Defendants filed false charges against him and refused
18 to provide discovery establishing Defendant Officers Uribe and Barajas
19 violated clearly established law. Plaintiff alleges he has been in
20 unlawful confinement for approximately nine months based upon false
21 charges from the June 19, 2014 incident. (Id.)

22 Plaintiff alleges that Defendant Jim Trott is the Police Officers
23 Association attorney assigned to investigate the shooting and insure
24 that Defendant Officers Uribe and Barajas complied with departmental
25 policy. Plaintiff alleges Defendant Trott has failed to turn over his
26 findings after Plaintiff moved for discovery in his pending criminal
27 case. Plaintiff alleges Defendants Lt. Cox, Commander R. Wood and Sgt.
28 Herzog investigated the shooting and have failed to turn over their

1 reports. Plaintiff alleges that Defendant R. Solorio was assigned as
2 Defendant Barajas' peer officer and has failed to turn over any
3 reports. Plaintiff alleges that Defendant H. Vong was assigned as
4 Defendant Uribe's peer officer and has also failed to turn over any
5 reports or findings. (Id.)

6 Plaintiff alleges that he has not had a preliminary hearing in
7 his pending criminal case due to the Defendants' actions by
8 withholding relevant discovery. (Id. at 8.)

9 Plaintiff alleges the following causes of action: (1) false
10 arrest and false imprisonment; (2) malicious prosecution; (3)
11 Fourteenth Amendment procedural due process violations; (4) excessive
12 force; and (5) racial profiling. (Id. at 6.)

13 14 STANDARD OF REVIEW

15 Because Plaintiff is seeking to proceed in forma pauperis, the
16 Court shall review such a complaint "as soon as practicable after
17 docketing." Pursuant to 28 U.S.C. §1915(e)(2), the District Court is
18 required to dismiss a complaint if the Court finds that the complaint
19 (1) is legally frivolous or malicious, (2) fails to state a claim upon
20 which relief may be granted, or (3) seeks monetary relief from a
21 defendant immune from such relief. 28 U.S.C. §1915(e)(2)(B) (re: all
22 in forma pauperis complaints).

23 "To survive a motion to dismiss, a complaint must contain
24 sufficient factual matter, accepted as true, to 'state the claim to
25 relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S.
26 662 (2009)(quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570
27 (2007)). "A claim has facial plausibility when the plaintiff pleads
28 factual content that allows the Court to draw the reasonable inference

1 that the defendant is liable for the misconduct alleged." Iqbal, 556
2 U.S. at 678.(citing Twombly, 550 U.S. at 556.) "The plausibility
3 standard is not akin to a 'probability requirement,' but it asks for
4 more than a sheer possibility that a defendant acted unlawfully."
5 (Id.) Although a complaint need not include "'detailed factual
6 allegations,' ... [a] pleading that offers 'labels and conclusions' or
7 'a formulaic recitation of the elements of the cause of action will
8 not do.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555.)
9 The Complaint must contain "factual content that allows the court to
10 draw the reasonable inference that the defendant is liable for the
11 misconduct alleged." Iqbal, 556 U.S. at 678. "[W]here the well-
12 pleaded facts do not permit the court to infer more than the mere
13 possibility of misconduct, the complaint has alleged - but it has not
14 'show[n]' - 'that the pleader is entitled to relief.'" (Id. at 679
15 [quoting Fed.R.Civ.P. 8(a)(2) (internal brackets omitted). "[A] well-
16 pled complaint may proceed even if it appears that a recovery is very
17 remote and unlikely." Twombly, 550 U.S. at 556 (quoting Scheuer v.
18 Rhodes, 416 U.S. 232, 236 (1974)).

19 In civil rights cases in which the Plaintiff appears pro se, the
20 pleadings must be construed liberally, so as to afford the plaintiff
21 the benefit of any doubt as to the potential validity of the claims
22 asserted. Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 623
23 (9th Cir. 1988). If, despite such liberal construction, the Court
24 finds that the complaint should be dismissed for failure to state a
25 claim, the Court has the discretion to dismiss the complaint with or
26 without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th
27 Cir. 2000). A pro se litigant should be given leave to amend, unless
28 it is clear that the deficiencies of the complaint cannot be cured by

1 amendment. Lopez, 203 F.3d at 1130-31; Cato v. United States, 70 F.3d
2 1103, 1106 (9th Cir. 1995); Noll v. Carlson, 809 F.2d 1446, 1448 (9th
3 Cir. 1987).

4 5 **DISCUSSION**

6 For all of the following reasons, the Complaint should be
7 dismissed with leave to amend.

8 9 **A. Section 1983 Requirements.**

10 In order to state a claim under section 1983, a plaintiff must
11 allege that: (1) the defendants were acting under color of state law
12 at the time the complained of acts were committed; and (2) the
13 defendants' conduct deprived plaintiff of rights, privileges, or
14 immunities secured by the Constitution or laws of the United States.
15 West v. Atkins, 487 U.S. 42 (1988); Haygood v. Younger, 769 F.2d 1350,
16 1354 (9th Cir. 1985) (en banc), cert. denied, 478 U.S. 1020 (1986).
17 Liability under section 1983 is predicated upon an affirmative link or
18 connection between the defendants' actions and the claimed
19 deprivations. See Rizzo v. Goode, 423 U.S. 362, 372-73 (1976); May v.
20 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d
21 740, 743 (9th Cir. 1978). That the defendant act under color of state
22 law is "a jurisdictional requisite for a §1983 action." (Id.)
23 Similarly, a plaintiff basing a cause of action on alleged
24 constitutional violations must show that the "actions complained of
25 are 'fairly attributable' to the government." Morse v. North Coast
26 Opportunities, Inc., 118 F.3d 1338, 1340 (9th Cir. 1997).

27 Liability may be imposed on an individual defendant under § 1983
28 only if the plaintiff can show that the defendant proximately caused

1 the deprivations of his federally protected rights of which he
2 complains. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris
3 v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981).

4
5 **B. Plaintiff's Claims for False Arrest, False Imprisonment and**
6 **Malicious Prosecution are Barred By Heck v. Humphrey.**

7 Plaintiff alleges a violation of his Fourth Amendment right to be
8 free from false imprisonment and false arrest. Plaintiff also alleges
9 malicious prosecution.

10 Under Heck v. Humphrey, 512 U.S. 477 (1994), a § 1983 claim that
11 would call into question the lawfulness of a plaintiff's conviction or
12 confinement is not cognizable, and therefor does not accrue, until and
13 unless the plaintiff can prove that his conviction or sentence has
14 been reversed on direct appeal, expunged by executive order, declared
15 invalid by a state tribunal authorized to make such a determination,
16 or called into question by a federal court's issuance of a writ of
17 habeas corpus. Heck, 512 U.S. at 446-87. Accordingly, when a plaintiff
18 files a § 1983 action, the Court must consider whether "a judgment in
19 favor of the plaintiff would necessarily imply the invalidity of his
20 conviction or sentence; if it would, the complaint must be dismissed
21 unless the plaintiff can demonstrate that the conviction or sentence
22 has already been invalidated. (Id. at 487.)

23 The Heck bar applies to false arrest claims. See Cabrera v. City
24 of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998) ("To prevail on
25 his 1983 claims for false arrest and imprisonment, [plaintiff] would
26 have to demonstrate that there was no probable cause to arrest him ...
27 [F]inding that there was no probable cause would 'necessarily imply'
28 that [plaintiff's] conviction for disturbing the peace was invalid.

1 Therefore, under Heck [plaintiff's] false arrest and imprisonment
2 claims [are] not cognizable."); see also Frost v. City and County of
3 San Francisco, 2006 WL 2325286 (N.D. Cal. June 8, 2006); Guerrero v.
4 Gates, 442 F.3d 697, 703 (9th Cir.2006)(concluding that Heck barred
5 plaintiff's civil rights claims alleging wrongful arrest, malicious
6 prosecution and conspiracy among police officers to bring false
7 charges against him); Smithart v. Towery, 79 F.3d 951, 952 (9th Cir.
8 1996)(holding that Heck barred Plaintiff's civil rights claims
9 alleging that defendants lacked probable cause to arrest him and
10 brought unfounded criminal charges against him). Heck prevents a
11 plaintiff from bringing a claim that, even if it does not directly
12 challenge the conviction, would imply that the conviction was invalid.

13 Here, Plaintiff alleges that he was falsely arrested and has been
14 falsely imprisoned and malicious prosecution. Plaintiff is currently
15 awaiting trial; thus a § 1983 action for false arrest and false
16 imprisonment upon which criminal charges are based, is barred by Heck
17 until the criminal charges have been dismissed or the conviction has
18 been overturned.

19
20 **C. Plaintiff Has Failed to Establish a Monell Violation Against**
21 **Defendant City of Long Beach.**

22 Plaintiff's claims against Defendants City of Long Beach and the
23 Long Beach Police Department fail because Plaintiff has not
24 demonstrated liability pursuant to Monell v. Dept. of Social Services,
25 436 U.S. 658, 694 (1978). For a municipality to be liable for
26 violation of constitutional rights pursuant to 42 U.S.C. § 1983,
27 plaintiff must establish that the municipality had a deliberate
28 policy, custom, or practice that was the "moving force" behind the

1 constitutional violation he suffered. Galen v. City of Los Angeles,
2 477 F.3d 652, 667 (9th Cir.2007), citing Monell, 436 U.S. at 694-95;
3 see also Oviatt v. Pierce, 945 F.2d 1470, 1474 (9th Cir. 1992). A
4 local government entity cannot be held liable simply because it
5 employs someone who has acted unlawfully. Monell, 435 U.S. at 694.

6 Plaintiff must demonstrate that Defendants acted with deliberate
7 indifference to Plaintiff's constitutional rights. In City of Canton
8 v. Harris, 489 U.S. 378, 389-91 (1989) the Supreme Court held that a
9 municipality may be liable if it fails to properly train peace
10 officers and the "failure to train amounts to deliberate indifference
11 to the rights of persons with whom the [officers] come into contact."
12 In other words, there must be a direct causal link between a municipal
13 policy or custom and the alleged constitutional deprivation. Id. at
14 385. Only where a failure to supervise and train reflects a
15 "deliberate or conscious choice" by a local government can the local
16 government be liable under § 1983. Id. at 389. Further, the plaintiff
17 must demonstrate that the alleged deficiency in supervision and
18 training actually caused the requisite indifference. Id. at 391. The
19 appropriate inquiry is therefore whether the injury would have been
20 avoided "had the employee been trained under a program that was not
21 deficient in the identified respect." (Id.)

22 Here, Plaintiff's Complaint alleges that Defendants City of Long
23 Beach and the Long Beach Police Department are responsible for
24 Defendants' actions pursuant to a "conspiracy to violate rights,
25 failure to train, supervise and implement sufficient procedures to
26 protect rights." (Id. at 3, 8.) Plaintiff's allegations are entirely
27 conclusory. Further, Plaintiff fails to sufficiently allege a specific
28 custom or policy of action or inaction of Defendants that caused the

1 alleged constitutional violation.

2
3 **ORDER**

4 For all of the foregoing reasons, IT IS HEREBY ORDERED that
5 Plaintiff's Complaint is dismissed with leave to amend. The First
6 Amended Complaint should bear the docket number assigned in this case,
7 be labeled "First Amended Complaint" and be complete in and of itself
8 without reference to the original Complaint or any other pleading,
9 attachment or document. Plaintiff may not add new Defendants.
10 Plaintiff is admonished that if he fails to timely file a First
11 Amended Complaint within 30 days of the date of this Memorandum and
12 Order, the Court will recommend that this action be dismissed with
13 prejudice on the grounds set forth above for failure to diligently
14 prosecute.

15
16 DATED: June 11, 2015

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE