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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DON MARTIN,
Plaintiff,
v.
CITY OF LOS ANGELES, et al.,
Defendants.

Case No. CV 16-2655 TJH (SS)
**MEMORANDUM AND ORDER DISMISSING
SECOND AMENDED COMPLAINT WITH
LEAVE TO AMEND**

I.

INTRODUCTION

On February 13, 2018, Plaintiff Don Martin ("Plaintiff"), a California resident proceeding pro se, filed a Second Amended Complaint, alleging violations of his civil rights pursuant to 42 U.S.C. § 1983. ("SAC," Dkt. No. 28). Plaintiff claims that the City of Los Angeles and various city employees caused his property to be unlawfully seized and destroyed on several occasions. (See SAC at 2-8).

1 Under Federal Rule of Civil Procedure 12(b)(6), a trial
2 court may dismiss a claim sua sponte "where the claimant cannot
3 possibly win relief." Omar v. Sea-Land Serv., Inc., 813 F.2d
4 986, 991 (9th Cir. 1987); see also Baker v. Director, U.S. Parole
5 Comm'n, 916 F.2d 725, 726 (D.C. Cir. 1990) (per curiam) (adopting
6 the Ninth Circuit's position in Omar and noting that such a sua
7 sponte dismissal "is practical and fully consistent with
8 plaintiff's rights and the efficient use of judicial resources").
9 When a plaintiff appears pro se in a civil rights case, the court
10 must construe the pleadings liberally and afford the plaintiff
11 the benefit of any doubt. Karim-Panahi v. Los Angeles Police
12 Dep't., 839 F.2d 621, 623 (9th Cir. 1988). In giving liberal
13 interpretation to a pro se complaint, the court may not, however,
14 supply essential elements of a claim that were not initially
15 pled. Ivey v. Bd. of Regents of Univ. of Alaska, 673 F.2d 266,
16 268 (9th Cir. 1982). A court must give a pro se litigant leave
17 to amend the complaint unless it is "absolutely clear that the
18 deficiencies of the complaint could not be cured by amendment."
19 Karim-Panahi, 839 F.2d at 623 (citation and internal quotations
20 omitted). For the reasons stated below, the Complaint is
21 DISMISSED with leave to amend.¹

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27 ¹ A magistrate judge may dismiss a complaint with leave to
28 amend without the approval of a district judge. See McKeever v.
Block, 932 F.2d 795, 798 (9th Cir. 1991).

1 II.

2 **FACTUAL ALLEGATIONS AND CLAIMS**

3
4 Plaintiff sues the City of Los Angeles ("the City") and
5 several city employees in their individual capacities: Nury
6 Martinez, a city councilwoman; Tamar Galatzan, a deputy city
7 attorney; Cline, a police officer; "Doe One," a police officer;
8 and "Does Two-Ten," city public works employees. (SAC at 2-4).

9
10 Plaintiff claims that Martinez, Galatzan and Does One-Ten
11 violated his Fourth Amendment and Due Process rights by causing
12 his property to be taken and destroyed. (Id. at 2, 5-8). He
13 alleges that this occurred at a homeless encampment on Bessemer
14 Street in Van Nuys, California on April 1 and May 23, 2014. (Id.
15 at 5). The lost property included "legal materials, food,
16 clothing, bedding, and other necessities of life." (Id.). He
17 alleges that on December 17, 2015, at a different Van Nuys street
18 corner, the same Defendants took away in a dump truck Plaintiff's
19 "electronic equipment, stationery, bicycles, food, etc." (Id. at
20 6). He further claims that on February 7, 2016, on Martinez's
21 orders, Doe One had Plaintiff's 1995 Dodge truck towed away,
22 though "the officer knew there was no parking violation and no
23 registration violation." (Id.). Plaintiff seeks monetary
24 relief. (Id. at 9).

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1 III.

2 DISCUSSION

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4 **A. Plaintiff Fails To State A Claim Against The City**

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6 Plaintiff attempts to state a claim against the City.
7 However, municipal entities, such as the City, may only be sued
8 for constitutional torts committed by their officials according
9 to an official policy, practice, or custom. Monell v. Dep't of
10 Soc. Servs. of City of N.Y., 436 U.S. 658, 690 (1978). Monell
11 specifically rejected governmental liability based on the
12 doctrine of respondeat superior. Id. at 691-94. Thus, a
13 government body cannot be held liable under section 1983 merely
14 because it employs a tortfeasor. Id. Insofar as Plaintiff is
15 suing the City, he must identify some official municipal policy
16 pursuant to which the actions of its representatives caused the
17 injuries complained of. Id. at 690-91; Lytle v. Carl, 382 F.3d
18 978, 982 (9th Cir. 2004). As the Ninth Circuit has found, "there
19 must be a 'widespread practice.'" Marsh v. Cty. of San Diego,
20 680 F.3d 1148, 1159 (9th Cir. 2012) (quoting Davis v. City of
21 Ellensburg, 869 F.2d 1230, 1233 (9th Cir. 1989)).
22
23

24
25 Here, Plaintiff asserts generally that the alleged
26 deprivations occurred "according to official custom and
27 practice," and that "similar actions are carried out every week
28

1 by the City.” (SAC at 2). However, Plaintiff fails to allege
2 any facts to show that Defendants’ actions are part of any
3 ongoing policy of the City, rather than being merely isolated
4 incidents. Accordingly, Plaintiff’s claims against the City are
5 dismissed with leave to amend.
6

7 **Plaintiff Fails To State A Claim Against The Named**
8 **Individual Defendants**

9
10 Because vicarious liability is inapplicable to section 1983
11 suits, “a plaintiff must plead that each Government-official
12 defendant, through the official’s own individual actions, has
13 violated the Constitution.” Ashcroft v. Iqbal, 556 U.S. 662, 676
14 (2009). The plaintiff must establish either the official’s
15 personal participation or “a sufficient causal connection”
16 between the official’s conduct and the alleged constitutional
17 violation. Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011).
18

19 Here, Plaintiff’s allegations against Martinez, Galatzan and
20 Cline are conclusory and vague. He asserts that Councilwoman
21 Martinez “is responsible for orchestrating the seizures” of his
22 property. (SAC at 2). He states that Galatzan, as the
23 “neighborhood prosecutor” for the City, “set in motion the
24 deprivations of Plaintiff’s rights.” (Id. at 3). He fails to
25 provide any facts showing how these Defendants orchestrated or
26 set in motion the alleged deprivations. Moreover, he claims that
27 Officer Cline “order[ed] seizures unlawfully - on grounds of
28 false pretenses.” (Id. at 3). However, he omits Cline from the

1 factual allegations, leaving no indication of what role Cline
2 played in the incidents. (See id. at 5-6).

3
4 Absent more specific allegations, Plaintiff has not
5 plausibly pled these Defendants' personal involvement in
6 violating Plaintiff's civil rights or any causal connection
7 between any of their actions and any constitutional violations.
8 Accordingly, Plaintiff's claims against Martinez, Galatzan and
9 Cline are dismissed with leave to amend.

10
11 **C. The Instant Complaint's Remaining Allegations Fail To Comply**
12 **With Federal Rule of Civil Procedure 8**

13
14 Rule 8 requires that a pleading contain "a short and plain
15 statement of the claim showing that the pleader is entitled to
16 relief." See Fed. R. Civ. P. 8. Rule 8 requires a showing,
17 rather than a blanket assertion, of entitlement to relief.
18 Factual allegations in a complaint satisfy the requirement of
19 providing fair notice of the nature of the claim, and the
20 grounds on which the claim rests. Fed. R. Civ. P. 8(a)(2);
21 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

22
23 Here, Plaintiff does not provide sufficient factual
24 allegations to satisfy Rule 8. He claims, for example, that
25 Martinez, Galatzan and Does Two-Ten unjustifiably seized his
26 personal property on three different occasions. (SAC at 5-6).
27 However, aside from the dates, street locations and types of
28 property seized, he fails to allege any facts about the nature of

1 these incidents. As such, Plaintiff's allegations do not show
2 that there are plausible grounds for relief, nor do they provide
3 enough facts for Defendants to properly respond to the claims.

4
5 Moreover, Plaintiff's claims appear to rest partly on the
6 right to be protected against unlawful search and seizure – a
7 fact-specific inquiry. Graham v. Connor, 490 U.S. 386, 396
8 (1989) (whether a "seizure is reasonable under the Fourth
9 Amendment requires a careful balancing of 'the nature and quality
10 of the intrusion on the individual's Fourth Amendment interests'
11 against the countervailing governmental interests at stake")
12 (some internal quotation marks omitted). In order for Plaintiff
13 to satisfy Rule 8, he must state a cognizable legal theory for an
14 unlawful seizure, providing applicable facts that demonstrate
15 there are plausible grounds for relief. Iqbal, 556 U.S. at 668.
16 Because the Second Amended Complaint fails to satisfy Rule 8, it
17 is dismissed with leave to amend.

18
19 **D. Substitute True Names for "Doe" Defendants**

20
21 Plaintiff fails to plead the names of the Doe Defendants.
22 Plaintiff is responsible for obtaining the full name of each
23 defendant named in any amended complaint. Failure to do so will
24 result in dismissal of claims against these seven "Doe"
25 defendants.

26
27 Accordingly, if Plaintiff does not know the full names of
28 the Doe Defendants, he must promptly investigate to determine the

1 true name of the defendant. Plaintiff may then substitute the
2 full names of those defendants who are inadequately identified in
3 the current Complaint.

4
5 **IV.**

6 **CONCLUSION**

7
8 For the reasons stated above, the Second Amended Complaint
9 is dismissed with leave to amend.² If Plaintiff still wishes to
10 pursue this action, he is granted **thirty (30) days** from the date
11 of this Memorandum and Order within which to file a Third Amended
12 Complaint. In any amended complaint, Plaintiff shall cure the
13 defects described above. **Plaintiff shall not include new**
14 **defendants or new allegations that are not reasonably related to**
15 **the claims asserted in prior complaints.** The Third Amended
16 Complaint, if any, shall be complete in itself and shall bear
17 both the designation "Third Amended Complaint" and the case
18 number assigned to this action. It shall not refer in any manner
19 to any prior complaint. Plaintiff shall limit his action only to

20
21 ² Plaintiff has another pending civil rights action in this
22 Court, which he initiated in 2012. (See CV 12-0315 TJH (SS)).
23 Plaintiff notes, in his Second Amended Complaint, that he intends
24 to seek leave in the 2012 action to amend his pleading to add the
25 claims from the instant case and then dismiss this case. (See
26 SAC at 9). However, Plaintiff previously moved to consolidate
27 the two cases on May 8, 2017, and the Court denied the motions on
28 June 16, 2017. (See CV 12-0315 TJH (SS), Dkt. Nos. 72, 74; CV
16-2655-TJH (SS), Dkt. Nos. 17, 19). The Court found that
consolidation was not in the interests of justice because,
despite some overlap in Defendants and time periods, the two
actions are not fully co-extensive and are at different stages of
litigation. (CV 12-0315 TJH (SS), Dkt. No. 74 at 3; CV 16-2655-
TJH (SS), Dkt. No. 19 at 3).

1 those Defendants who are properly named in such a complaint,
2 consistent with the authorities discussed above. The Court
3 reminds Plaintiff that it may be more efficient to seek to amend
4 his Prior Complaint with related claims, as opposed to initiating
5 an entirely new action.

6
7 In any amended complaint, Plaintiff should confine his
8 allegations to those operative facts supporting each of his
9 claims. Plaintiff is advised that pursuant to Federal Rule of
10 Civil Procedure 8(a), all that is required is a "short and plain
11 statement of the claim showing that the pleader is entitled to
12 relief." **Plaintiff is strongly encouraged to utilize the**
13 **standard civil rights complaint form when filing any amended**
14 **complaint, a copy of which is attached.** In any amended
15 complaint, Plaintiff should make clear the nature and grounds for
16 each claim and specifically identify the Defendants he maintains
17 are liable for that claim. Plaintiff shall not assert any claims
18 for which he cannot allege a proper factual basis.

19
20 **Plaintiff is explicitly cautioned that failure to timely**
21 **file a Third Amended Complaint, or failure to correct the**
22 **deficiencies described above, will result in a recommendation**
23 **that this entire action be dismissed with prejudice for failure**
24 **to prosecute and obey Court orders pursuant to Federal Rule of**
25 **Civil Procedure 41(b).**

26
27 **Plaintiff is further advised that if he no longer wishes to**
28 **pursue this action, he may voluntarily dismiss it by filing a**

