UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ISAAC JOSE RODRIGUEZ, Plaintiff, v. DERRICK CARTER, *et al.*, Defendants.	Case No. CV 16-04521 JFW (AFM) **ORDER DISMISSING SECOND AMENDED COMPLAINT WITH LEAVE TO AMEND**

On June 22, 2016, plaintiff filed a Complaint in this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. He subsequently was granted leave to proceed *in forma pauperis*. The Complaint named as defendants Derrick Carter and Daniel Morris, both police officers with the City of Pasadena Police Department, Phillip Sanchez, the Chief of Police for the City of Pasadena Police Department, and the City of Pasadena. (ECF No. 1 at 2-3.)[1] Plaintiff's claims appeared to arise from an arrest that occurred on October 26, 2013. (*Id*. at 3.)

In accordance with the terms of the "Prison Litigation Reform Act of 1995," the Court screened the Complaint prior to ordering service for purposes of

[1] The Court references the electronic version of the pleadings.

determining whether the action is frivolous or malicious; or fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2); *see, e.g.*, *Shirley v. Univ. of Idaho*, 800 F.3d 1193 (9th Cir. 2015) (citing 28 U.S.C. § 1915(e)(2)(B) and noting that a "district court shall screen and dismiss an action filed by a plaintiff proceeding *in forma pauperis*"); *Lopez v. Smith*, 203 F.3d 1122, 1127 n.7 (9th Cir. 2000) (noting "section 1915(e) applies to all *in forma pauperis* complaints" and directing "district courts to dismiss a complaint that fails to state a claim upon which relief may be granted") (en banc).

Following careful review of the Complaint, the Court found that its allegations appeared insufficient to state any claim upon which relief may be granted. Accordingly, on October 26, 2016, the Complaint was dismissed with leave to amend, and plaintiff was ordered, if he wished to pursue the action, to file a First Amended Complaint no later than November 30, 2016. Further, plaintiff was admonished that, if he failed to timely file a First Amended Complaint, or failed to remedy the deficiencies of his pleading, the Court would recommend that this action be dismissed without leave to amend and with prejudice. (ECF No. 9.)

On November 30, 2016, plaintiff filed a First Amended Complaint ("FAC"). The FAC named as defendants Officers Derrick Carter and Daniel Morris and the City of Pasadena. (ECF No. 11 at 2-3.) After careful review of the FAC, the Court once again found that plaintiff's allegations appeared insufficient to state any claim on which relief may be granted. Accordingly, the FAC was dismissed with leave to amend. Further, plaintiff was admonished that, if he failed to timely file a Second Amended Complaint, or failed to remedy the deficiencies of his pleading, the Court would recommend that this action be dismissed without leave to amend and with prejudice. (ECF No. 15.)

On February 9, 2107, plaintiff filed a Second Amended Complaint ("SAC") (ECF No. 17) accompanied by plaintiff's supporting declaration ("Declaration")

(ECF No. 18). The Declaration appears to set forth the same or extremely similar facts concerning plaintiff's arrest on October 26, 2103, as those that are alleged in the SAC. The SAC seeks monetary damages and unspecified injunctive relief for "plaintiffs [sic] and others who are similarly situated." (ECF No. 17 at 10-11.) The SAC names as defendants the City of Pasadena Police Department, and Officers Carter and Morris. (*Id*. at 2-3.)

Once again, in accordance with the mandate of the PLRA, the Court has screened the SAC prior to ordering service for purposes of determining whether the action is frivolous or malicious; or fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. The Court's screening of the pleading under the foregoing statute is governed by the following standards. A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a cognizable legal theory. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990); *see also Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir. 2015) (when determining whether a complaint should be dismissed for failure to state a claim under 28 U.S.C. § 1915(e)(2), the court applies the same standard as applied in a motion to dismiss pursuant to Rule 12(b)(6)). In determining whether the pleading states a claim on which relief may be granted, its allegations of material fact must be taken as true and construed in the light most favorable to plaintiff. *See Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the "tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In addition, since plaintiff is appearing *pro se*, the Court must construe the allegations of the pleading liberally and must afford plaintiff the benefit of any doubt. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). However, the Supreme Court has held that, "a plaintiff's obligation to provide the 'grounds' of

his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level . . . on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted, alteration in original); *see also Iqbal*, 556 U.S. at 678 (To avoid dismissal for failure to state a claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' . . . A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (internal citation omitted)); *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011) ("the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation").

After careful review and consideration of the SAC under the foregoing standards, the Court again finds that plaintiff's allegations appear insufficient to state any claim on which relief may be granted. Because plaintiff is proceeding *pro se* in this civil rights action, the Court will provide one final opportunity to allow plaintiff to attempt to cure the deficiencies set forth below by amendment. Accordingly, the SAC is dismissed with leave to amend. *See Rosati*, 791 F.3d at 1039 ("A district court should not dismiss a *pro se* complaint without leave to amend unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.") (internal quotation marks omitted).

If plaintiff still desires to pursue this action, he is ORDERED to file a Third Amended Complaint no later than May 8, 2017, remedying the deficiencies discussed below. Further, plaintiff is admonished that, if he fails to timely file a Second Amended Complaint, or fails to remedy the deficiencies of this

pleading as discussed herein, the Court will recommend that this action be dismissed without leave to amend and with prejudice.[2]

DISCUSSION

A. To the extent that plaintiff's claims implicate the validity of a prior conviction, the claims are barred by Heck.

A petition for habeas corpus is a prisoner's sole judicial remedy when attacking "the validity of the fact or length of . . . confinement." *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973); *Young v. Kenny*, 907 F.2d 874, 875 (9th Cir. 1990). Thus, plaintiff may not use a civil rights action to challenge the validity of a conviction or incarceration. Such relief only is available in a habeas corpus action. In addition, to the extent that a plaintiff is attempting to use a civil rights action to seek monetary damages for an allegedly unlawful conviction where success would necessarily implicate the fact or duration of his conviction, his claims are not cognizable under § 1983 unless and until plaintiff can show that "the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Under *Heck*, if a judgment in favor of

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[2] Plaintiff is advised that this Court's determination herein that the allegations in the Second Amended Complaint are insufficient to state a particular claim should not be seen as dispositive of that claim. Accordingly, although this Court believes that you have failed to plead sufficient factual matter in your pleading, accepted as true, to state a claim to relief that is plausible on its face, you are not required to omit any claim or defendant in order to pursue this action. However, if you decide to pursue a claim in a Third Amended Complaint that this Court has found to be insufficient, then this Court, pursuant to the provisions of 28 U.S.C. § 636, ultimately will submit to the assigned district judge a recommendation that such claim be dismissed with prejudice for failure to state a claim, subject to your right at that time to file Objections with the district judge as provided in the Local Rules governing duties and functions of Magistrate Judges. L. Civ. R. 72.

a plaintiff on a civil rights action *necessarily* will imply the invalidity of his or her conviction or sentence, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence already has been invalidated. *Id.*; *see also Skinner v. Switzer*, 562 U.S. 521, 525 (2011) ("Where the prisoner's claim would not 'necessarily spell speedier release,' however, suit may be brought under § 1983."). Accordingly, "*Heck* prohibits the use of § 1983 to attack the validity of a conviction, because a recovery in the damages action would necessarily imply that the conviction was wrongfully obtained." *Furnace v. Giurbino*, 838 F.3d 1019, 1027 (9th Cir. 2016).[3]

Here, plaintiff continues to seek monetary damages arising, in part, from an "unlawful stop and detention" (ECF No. 17 at 4); an allegedly "unreasonable search and seizure" (*id*.); an arrest in "retaliation because he was exercising his rights to remain silent and asking why he is [sic] being stopped" (*id.* at 5); and "false imprisonment" (*id.* at 6). Plaintiff alleges that he was arrested by defendants Officer Carter and Officer Morris on October 26, 2013, and that he was subsequently charged with a violation of Cal. Penal Code § 148(a) for "delaying a police officer." (*Id.* at 1, 3.) Plaintiff alleges that criminal proceedings took place on April 1, 2014, that plaintiff was represented by a public defender, and that he has "filed many motions and writ's [sic] to the Superior Court arguing that his public counsel who represented him was insufficient of counsel [sic] to the plaintiff." (*Id.*

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[3] The Ninth Circuit has held that, in rare cases where a plaintiff has no habeas remedy available through no fault of his own, *Heck* may not bar him from raising a claim attacking his conviction pursuant to § 1983. *See Lyall v. City of Los Angeles*, 807 F.3d 1178, 1191-92 & n.12 (9th Cir. 2015) (noting that "'timely pursuit of available habeas relief' is an important prerequisite for a § 1983 plaintiff seeking" to raise an otherwise barred claim and finding that plaintiff's failure to seek to invalidate his conviction through state appeals barred his federal § 1983 suit); *Nonnette v. Small*, 316 F.3d 872, 876-77 (9th Cir. 2002) (finding plaintiff was not barred from raising a civil rights claim challenging a disciplinary proceeding because he had been released from prison and a habeas petition would be moot). In this case, plaintiff does not allege that he sought to invalidate any conviction through the state appeal process or that no habeas relief was available to him.

at 4.) As in the FAC, plaintiff's SAC sets forth no factual allegations concerning the outcome of this criminal case. In the SAC, the only federal civil rights claims that plaintiff purports to raise against the individual defendants are for an "unlawful stop and detention" (*id.* at 4), retaliatory arrest in violation of the First Amendment (*id.* at 5), "false imprisonment" (*id.* at 6), and "unreasonable search" (*id.*). All of these federal claims arise from plaintiff's arrest on October 26, 2013.

However, the Court notes that plaintiff's Complaint included a factual allegation that is not set forth in his SAC. According to the Complaint, on November 17, 2013, plaintiff "entered a plea of no contest to the court of [sic] all counts of the complaint." (ECF No.1 at 4.) As the Court previously has advised plaintiff, under California law, a plea of "no contest" or "nolo contendere" has the same legal effect as a plea of guilty. *See* Cal. Penal Code § 1016(3). Therefore, to the extent that plaintiff entered a plea of "no contest" to charges arising from the arrest on October 26, 2013, plaintiff must show that this conviction has been invalidated or overturned before he may proceed with any civil rights claims that necessarily would demonstrate the invalidity of this conviction.

Accordingly, because success on the federal civil rights claims alleged in the SAC may demonstrate the invalidity of any conviction that resulted from plaintiff's arrest on October 26, 2013, plaintiff may not raise such claims unless and until he can allege that the charges were dropped, or that any resulting conviction "has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." *Heck*, 512 U.S. at 486-87.

B. <u>Plaintiff's allegations are insufficient to state a claim against the City of Pasadena or the Pasadena Police Department</u>.

To the extent that plaintiff is purporting to hold the City of Pasadena liable on a theory of failing to adequately train its police officers (*see* ECF No. 17 at 9),

the Supreme Court in *Monell v. New York City Dep't of Social Servs*., 436 U.S. 658, 694 (1978), held that a local government entity "may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Monell*, 436 U.S. at 694; *see also Connick v. Thompson*, 563 U.S. 51, 60 (2011) ("local governments are responsible only for their own illegal acts"). Here, the SAC once again fails to set forth any allegations that any specific policy or custom of the City of Pasadena was the "actionable cause" of a specific constitutional violation. *See Tsao v. Desert Palace, Inc*., 698 F.3d 1128, 1146 (9th Cir. 2012) ("Under *Monell*, a plaintiff must also show that the policy at issue was the 'actionable cause' of the constitutional violation, which requires showing both but for and proximate causation."). Rather, the SAC merely sets forth the conclusory allegation that the "failure to provide proper training was the cause of the deprivation of plaintiffs [sic] right of unreasonable search and seizure." (ECF No. 17 at 10.) Such conclusory allegations are not entitled to a presumption of truth in determining whether plaintiff's SAC alleges any claim that is plausible. *See Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) ("a court discounts conclusory statements, which are not entitled to the presumption of truth, before determining whether a claim is plausible").

Further, a local government entity, such as the City of Pasadena, may be held liable for a failure to train its employees only if "the failure to train amounts to deliberate indifference to the rights of persons" impacted by the inaction. *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). In order to state a claim for failure to train, plaintiff must allege that "in light of the duties assigned to specific officers or employees the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of

the city can reasonably be said to have been deliberately indifferent to the need." *City of Canton*, 489 U.S. at 390. The Supreme Court has emphasized that "[d]eliberate indifference is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." *Connick*, 563 U.S. at 61 (internal quotation marks omitted). "Thus, when [a local entity's] policymakers are on actual or constructive notice that a particular omission in their training program causes [the entity's] employees to violate citizens' constitutional rights, the [entity] may be deemed deliberately indifferent if the policymakers choose to retain that program." *Id.* Further, "to demonstrate that the [entity] was on notice of a constitutionally significant gap in its training, it is 'ordinarily necessary' for a plaintiff to demonstrate a 'pattern of similar constitutional violations by untrained employees.'" *Kirkpatrick v. Cnty. of Washoe*, 843 F.3d 784, 794 (9th Cir. 2016) (quoting *Connick*, 563 U.S. at 62).

Plaintiff's SAC sets forth factual allegations concerning only one arrest. Allegations of one incident involving two allegedly inadequately trained individuals do not raise an inference that inadequate training caused the alleged constitutional violation of which plaintiff complains. *See, e.g., Marsh v. County of San Diego*, 680 F.3d 1148, 1159 (9th Cir. 2012) (allegations of an isolated instance of a constitutional violation are insufficient to support a "failure to train" theory).

Accordingly, the Court finds that the SAC fails to set forth any factual allegations plausibly suggesting that a lack of training or the execution of a specific policy, regulation, custom, or the like was the "actionable cause" of his alleged constitutional violations. *See Tsao*, 698 F.3d at 1146.

C. <u>Plaintiff's allegations fail to state a claim for injunctive relief</u>.

The SAC seeks injunctive relief against the defendants, the Pasadena Police Department and two of its officers, on behalf of unspecified "plaintiffs" and "others who are similarly situated." (ECF No. 17 at 10.) As a *pro se* litigant, plaintiff does

not have standing to vicariously assert the constitutional claims of others. *See Johns v. County of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997); *United States v. Mitchell*, 915 F.2d 521, 526 n.8 (9th Cir. 1990) (*pro se* litigant does not have standing to raise the claims of other persons whose rights may have been violated).

Further, plaintiff's claims all arise from one arrest by the police officers. The SAC fails to set forth any factual allegations that give rise to a reasonable inference that plaintiff will again be subject to arrest by these officers, or by other Pasadena Police Department officers under similar circumstances. Allegations that only pertain to a single, past, incident of harm are insufficient to support a claim for injunctive relief. Rather, in order to state a claim for prospective injunctive relief, a plaintiff must demonstrate that a credible threat exists that he will again be subjected to the specific injury for which relief is sought. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). "[P]ast exposure to harm is largely irrelevant when analyzing claims of standing for injunctive relief that are predicated upon threats of future harm." *Nelson v. King County*, 895 F.2d 1248, 1251 (9th Cir. 1990) (citing *O'Shea v. Littleton*, 414 U.S. 488, 491 (1974)).

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If plaintiff still desires to pursue this action, he is ORDERED to file a Third Amended Complaint no later than May 8, 2017, remedying the pleading deficiencies discussed above. The Third Amended Complaint should bear the docket number assigned in this case; be labeled "Third Amended Complaint"; and be complete in and of itself without reference to the original complaint or any other pleading, attachment, declaration, or document.

The clerk is directed to send plaintiff a blank Central District civil rights complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished that, if he desires to pursue this action, he must sign and date the civil rights complaint form, and he must use the space provided in the form to set forth all of the claims that he wishes to assert in a Third Amended Complaint.

Plaintiff is further admonished that, if he fails to timely file a Third Amended Complaint, or fails to remedy the deficiencies of his pleading as discussed herein, the Court will recommend that the action be dismissed with prejudice on the grounds set forth above and for failure to diligently prosecute.

In addition, if plaintiff no longer wishes to pursue this action, he may request a voluntary dismissal of the action pursuant to Federal Rule of Civil Procedure 41(a). The clerk also is directed to attach a Notice of Dismissal form for plaintiff's convenience.

IT IS SO ORDERED.

DATED: April 6, 2017

ALEXANDER F. MacKINNON
UNITED STATES MAGISTRATE JUDGE