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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARVIN LOUIS LOWERY JR.,)	Case No. CV 18-9644-R (JPR)
)	
Plaintiff,)	
)	ORDER DISMISSING COMPLAINT WITH
v.)	LEAVE TO AMEND
)	
CITY OF LOS ANGELES et al.,)	
)	
Defendants.)	

On November 15, 2018, Plaintiff filed pro se a civil-rights action under 42 U.S.C. § 1983. He was subsequently granted leave to proceed in forma pauperis. His claims arise from a warrantless misdemeanor arrest at the Westwood branch of the Los Angeles Public Library on June 21, 2018.

After screening the Complaint under 28 U.S.C. § 1915(e)(2), the Court finds that its allegations fail to state a claim upon which relief might be granted. Although the Court is skeptical that Plaintiff can state an actionable claim under § 1983, the Complaint is dismissed with leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc) (holding that

1 pro se litigant must be given leave to amend complaint unless it
2 is absolutely clear that deficiencies cannot be cured). If
3 Plaintiff desires to pursue any of his claims, he is ORDERED to
4 file a first amended complaint within 28 days of the date of this
5 order, remedying the deficiencies discussed below.

6 ALLEGATIONS OF THE COMPLAINT

7 At about 12:30 p.m. on Thursday, June 21, 2018, Plaintiff
8 "was sitting at the border of the general section and the
9 children's section" in the Westwood branch of the Los Angeles
10 Public Library. (Compl. at 5-6.) The library has a posted
11 warning that patrons who engage in disruptive behavior, do not
12 follow rules, or do not leave the library when asked "will be
13 subject to arrest and prosecution" under Penal Code section
14 602.1(b).¹ (Id., Exs. B & C; see also Compl. at 4, 7.)

15 Plaintiff "frequented th[e] [Westwood branch] library often and
16 incurred minimal issue[s]" with staff and a "newly contracted"
17 security company. (Compl. at 5-6.)

18 "With a certain sensitivity" for "other patron[is],"
19 Plaintiff began to "engage[] with [his] daily audible ruminations
20 at a hushed tone." (Id. at 6.)² "For some reason," that conduct

21
22 ¹ That statute provides in relevant part that anyone who
23 "intentionally interferes with any lawful business carried on by
24 the employees of a public agency open to the public," by
25 "obstructing or intimidating" those present or attempting to
26 transact business with the agency, "and who refuses to leave the
27 premises" upon request of an agency manager or supervisor or a
28 peace officer is guilty of a misdemeanor. See § 602.1(b).

26 ² Plaintiff suffers from unspecified "extreme mental issues"
27 that cause "psychotic outbursts" and for which he takes
28 "psychotropic drug[s]," including Risperdal. (See Compl. at 6-7.)
He does not specifically allege that his "daily audible

1 "aroused the attention of one of the librarians," who approached
2 Plaintiff and warned him that he could not talk on his cell
3 phone. (Id.) Plaintiff has "never been given" that librarian's
4 name (id.) but appears to identify her later as nondefendant
5 Christy Carr (see id. at 8, 15). He "informed her that [he] was
6 not on [his] cell phone" and "questioned her admonishment" by
7 stating that his "tone was at an appropriate level considering
8 where [he] was sitting." (Id. at 6.) The librarian stated that
9 "phone calls were not allowed to be taken within the library" and
10 "went back to her station." (Id.)

11 Plaintiff, "[s]lightly agitated," "continued with [his]
12 audible ruminations." (Id.) "As a coping mechanism," he pulled
13 out a needle and thread and "began to sew [his] newly acquired
14 Levi's [t]rucker [j]acket." (Id.) He "continued to sew quietly
15 in the corner" until Los Angeles Police Department officers
16 arrived. (Id.) He apparently continued to ruminate audibly
17 while sewing. (See id.)

18 The "admonishing librarian," evidently accompanied by
19 officers, "came to [Plaintiff's] table" and "informed" him that
20 he "was not allowed to continue to patron [sic]" the library "due
21 to ignoring their policy on no phone calls." (Id.) He
22 "informed" the officers of "what [he has] written previously."³
23 (Id.) The officers "talked to the librarian near her station" as

24 _____
25 ruminations" resulted from any mental-health problem, however.

26 ³ Plaintiff does not specifically allege what he told the
27 officers (see Compl. at 6), but the Court infers that he denied he
28 had been talking on a cell phone and may have said other things.

1 Plaintiff "watched from afar." (Id.) They then returned and
2 "inform[ed]" him that "if [he] continued to refuse to leave," he
3 would be "put under citizen's arrest and escorted out of the
4 building."⁴ (Id.) He "subsequently refused," and the officers
5 told him to "pack his things." (Id.) After he had finished
6 packing, the librarian "came over again and stated that [he] was
7 not allowed to continue patron[iz]ing the library that day," and
8 the LAPD officers "informed [him] again that if [he] refused to
9 leave [he]'d be arrested for trespassing." (Id.)

10 Plaintiff "again refused" to leave, "was put in handcuffs[,]
11 and [was] escorted outside." (Id.)⁵ He was taken to a local
12 police station and detained before being "issued a ticket for the
13 misdemeanor of [t]respassing" in violation of Penal Code section
14 "602(q)."⁶ (Id.; see also id., Ex. A.) Plaintiff was

16 ⁴ Plaintiff does not allege that he was asked to leave on any
17 previous occasion (see generally Compl. at 5-16) and contends that
18 the library's suspension letter stating otherwise is "fraudulent"
(see id. at 8 & Ex. E).

19 ⁵ Plaintiff characterizes the incident as a citizen's arrest
20 (see, e.g., Compl. at 6) by Carr or some other librarian (see id.
21 at 7), but it is unclear who actually arrested him and whether that
22 person was a police officer (compare id. at 6 (officers warned him
23 of possibility of trespassing arrest, and he was put in handcuffs
24 when he refused to leave), with id. at 8 (Complaint based on
25 librarian's citizen's arrest)). The citation he was issued is
26 largely illegible and only partially filled out, but it appears to
27 list a "Ruiz" in a space for the name of the "[a]rresting or
28 [c]iting [o]fficer." (See id., Ex. A.) A space below that for the
"[n]ame of [a]rresting [o]fficer, if different from [c]iting
[o]fficer," has been left blank. (See id.)

⁶ That statute provides in relevant part that anyone who
"refus[es] or fail[s] to leave a public building of a public
agency" upon request by a "guard, watchperson, or custodian" during
hours when the building is normally closed is guilty of misdemeanor

1 traumatized by the experience and "consider[s] it a blessing that
2 [he] was not hospitalized for a sixth time with as psychotic as
3 [he] was." (Compl. at 7.) He does not allege any physical
4 trauma or discomfort from his arrest, handcuffing, or detention.
5 (See generally id. at 6-15.)

6 On an unspecified date, Plaintiff attempted to appear in
7 court for the trespassing violation. (Id. at 8; see also id.,
8 Ex. A (citation with date of notice to appear in court
9 illegible).) But he couldn't find his name on the docket and
10 discovered later that the city attorney had decided not to file a
11 case against him. (Compl. at 8.) "The woman" who gave him that
12 information, apparently an employee of the city attorney's
13 office, also "implied that it was in [his] best interest" to
14 "avoid that library." (Id.)

15 On August 6, 2018, Plaintiff filed suit in Los Angeles
16 County Superior Court against the City of Los Angeles and its
17 public library, bringing claims of false arrest and imprisonment
18 arising from the June 21, 2018 incident. (See, e.g., Compl., Ex.
19 M.) That suit evidently remains pending, see Online Servs.,
20 Super. Ct. of Cal., Cnty. of L.A., [http://www.lacourt.org/](http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil)
21 [casesummary/ui/index.aspx?casetype=civil](http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil) (search for case number
22 BC716638) (last visited Dec. 18, 2018), although Plaintiff
23 appears to believe it has been dismissed (see Compl., Ex. N at 52
24 (alleging that on Oct. 10, 2018, state-court judge sustained
25 City's demurrer and dismissed case without leave to amend).

26 _____
27 trespassing "if the surrounding circumstances would indicate to a
28 reasonable person that [the accused] has no apparent lawful
business to pursue." Cal. Penal Code § 602(q).

1 Despite the unidentified woman's advice, Plaintiff
2 "attempted to patron [sic]" the Westwood branch library on August
3 16, 2018, and "was summarily turned away" by Carr and a security
4 guard. (Compl. at 8.) They and another "unnamed librarian" gave
5 him a "[s]uspension letter," which contained incorrect or
6 "fraudulent" information. (Id.; see also id., Ex. E.) More
7 specifically, the letter, dated July 17, 2018, asserted that an
8 unidentified library patron, apparently later identified as
9 Plaintiff, had directed threats and profanity at library staff
10 and patrons on May 4 and 17, 2018, and then had refused to leave.
11 (See id., Ex. E at 1.)⁷ The letter suspended the person's
12 library privileges until October 18, 2018. (See id. at 2.) The
13 letter does not contain Plaintiff's name or any other identifying
14 information, nor does it mention the June 21, 2018 incident.
15 (See generally id.)

16 Plaintiff was "escorted" out of the library by the LAPD
17 shortly after being presented with the letter. (Compl. at 8.)
18 He does not allege whether he was detained or cited for or
19 charged with any Penal Code violation at that time. (Id.)
20 Evidently later that same day, he emailed nondefendant City
21 Attorney Mike Feuer to "inform[] the City as to what was
22 transpiring at this rogue library" but received no immediate
23 response. (Id.; see also id., Ex. D at 24 (email from Plaintiff
24 to Feuer regarding civil case and suspension letter), 27 (email
25 from Plaintiff to Feuer regarding suspension letter, "pending
26 _____

27 ⁷ For nonconsecutively paginated documents, the Court uses the
28 pagination generated by its Case Management/Electronic Case Filing
System.

1 litigation," and Plaintiff's intent to visit library again when
2 it opened).)

3 Plaintiff went to the library again at about 9:30 a.m. on
4 August 17, 2018; "[a]gain [the] LAPD was called," and he was
5 escorted out at about 12:45 p.m. (Compl. at 8-9.) He does not
6 allege whether he was asked to leave by anyone or if he was
7 detained by the LAPD, but he was issued a 24-hour trespassing
8 warning under Los Angeles Municipal Code § 41.24(d).⁸ (Id. at 9
9 & Ex. G.) He again emailed Feuer (Compl. at 9 & Ex. D at 30) but
10 apparently received no response. On Saturday, August 18, 2018,
11 at about 3 p.m., "after the 24 hours had passed," Plaintiff again
12 arrived at the Westwood branch library and "was escorted out" by
13 the LAPD. (Compl. at 9.) "The librarians continued to reference
14 the [f]raudulent letter to state why [he] was excluded from the
15 library." (Id.) He does not allege how long he was at the
16 library or what he was doing or intended to do there. This time,
17 Plaintiff "left without issue" and "sent a final email" to Feuer.
18 (Id.; see also id., Ex. D at 33. But see id., Ex. D. at 34 (Aug.
19 23, 2018 email to Feuer complaining that LAPD officer had warned
20 Plaintiff that he would be arrested for trespassing if he
21 returned to Westwood branch library).) The Complaint does not
22 allege specific facts as to any response to those emails. (See
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24

25
26 ⁸ That provision authorizes the arrest of anyone who enters
27 or is present at "private property open to the general public"
28 and warned by the owner or his agent of the possibility of arrest
for noncompliance. L.A. Mun. Code § 41.24(d).

1 generally id. at 5-16.)⁹

2 Plaintiff sues the City of Los Angeles and the Los Angeles
3 Public Library. (Compl. at 1, 4-5.) He does not name any
4 individuals as Defendants. (See id.) He brings causes of action
5 for false arrest under the Fourth Amendment (id. at 12-13),
6 "[f]alse [i]mprisonment" (id. at 13),¹⁰ and a state-law claim for
7 "[m]ental [a]nguish" (id. at 13-14). His claims apparently arise
8 only from the June 21, 2018 arrest and detention and not the
9 suspension letter or any later removal from the library premises.
10 (See, e.g., id. at 7 ("[The major aspect of this complaint is the
11 basis behind that librarian's 'Citizen's Arrest [on June 21,
12 2018].'"); see also generally id. at 4-6, 13-14.) He seeks
13 \$250,000 in damages and the release of various government
14

15 ⁹ On August 28, 2018, Deputy City Attorney Matthew McAleer
16 sent Plaintiff a "meet and confer" email informing him that the
17 City intended to file a demurrer to his lawsuit and asking him to
18 voluntarily dismiss his case. (See Compl., Ex. L.) Plaintiff
19 indicates that he received no response to the "7 emails" he sent to
20 Feuer and that he "lost access to the email [address]" where
21 McAleer sent the "meet and confer" email. (See Compl., Ex. D at
22 21.)

23 ¹⁰ Plaintiff's second cause of action does not specifically
24 allege any constitutional deprivation, and the cases it cites do
25 not appear to be relevant to any § 1983 claim; one is an FTCA case
26 applying New York law, and the other is a Puerto Rico Supreme Court
27 case applying Puerto Rico law. (See Compl. at 11, 13 (citing Ayala
28 v. San Juan Racing Corp., 12 P.R. Offic. Trans. 1012, 1021 (1982),
and Bernard v. United States, 25 F.3d 98, 102 (2d Cir. 1994)).)
False imprisonment is a state-law tort. See Slama v. City of
Madera, No. 1:08-cv-810-AWI GSA., 2008 WL 5246006, at *2 (E.D. Cal.
Dec. 17, 2008); Lyons v. Fire Ins. Exch., 161 Cal. App. 4th 880,
888 (2008) (listing elements of tortious false imprisonment under
California law). But even liberally construed as a Fourth
Amendment unreasonable-seizure claim, see Alvarez v. Hill, 518 F.3d
1152, 1158 (9th Cir. 2008), it fails for the reasons discussed
below.

1 documents under the Freedom of Information Act, 5 U.S.C. § 552,
2 and certain provisions of the California Public Records Act,
3 Government Code sections 6250-70 & 6275-76.48. (See, e.g.,
4 Compl. at 14-15.)

5 STANDARD OF REVIEW

6 A complaint may be dismissed as a matter of law for failure
7 to state a claim "where there is no cognizable legal theory or an
8 absence of sufficient facts alleged to support a cognizable legal
9 theory." Shroyer v. New Cingular Wireless Servs., Inc., 622 F.3d
10 1035, 1041 (9th Cir. 2010) (as amended) (citation omitted);
11 accord O'Neal v. Price, 531 F.3d 1146, 1151 (9th Cir. 2008). In
12 considering whether a complaint states a claim, a court must
13 generally accept as true all the factual allegations in it.
14 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); Hamilton v. Brown,
15 630 F.3d 889, 892-93 (9th Cir. 2011). The court need not accept
16 as true, however, "allegations that are merely conclusory,
17 unwarranted deductions of fact, or unreasonable inferences." In
18 re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008)
19 (citation omitted); see also Shelton v. Chorley, 487 F. App'x
20 388, 389 (9th Cir. 2012) (finding that district court properly
21 dismissed civil-rights claim when plaintiff's "conclusory
22 allegations" did not support it). Although a complaint need not
23 include detailed factual allegations, it "must contain sufficient
24 factual matter, accepted as true, to 'state a claim to relief
25 that is plausible on its face.'" Iqbal, 556 U.S. at 678 (quoting
26 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)); Yagman v.
27 Garcetti, 852 F.3d 859, 863 (9th Cir. 2017). A claim is facially
28 plausible when it "allows the court to draw the reasonable

1 inference that the defendant is liable for the misconduct
2 alleged." Iqbal, 556 U.S. at 678. "A document filed pro se is
3 'to be liberally construed,' and 'a pro se complaint, however
4 inartfully pleaded, must be held to less stringent standards than
5 formal pleadings drafted by lawyers.'" Erickson v. Pardus, 551
6 U.S. 89, 94 (2007) (per curiam) (citations omitted).

7 DISCUSSION

8 **I. The Complaint Appears to Be Duplicative of Plaintiff's** 9 **State-Court Lawsuit**

10 The Complaint is likely not properly heard by this Court
11 because it is duplicative of Plaintiff's pending state case. A
12 suit is duplicative if "the claims, parties, and available relief
13 do not significantly differ between the two actions." Adams v.
14 Cal. Dep't of Health Servs., 487 F.3d 684, 689 (9th Cir. 2007)
15 (citation omitted), overruled on other grounds by Taylor v.
16 Sturgell, 553 U.S. 880, 904 (2008). Plaintiff's state-court
17 lawsuit evidently also sues the City and its library for false
18 arrest and false imprisonment based on the events of June 21,
19 2018. (See, e.g., Compl., Ex. M at 48.) It appears that both
20 actions seek only monetary damages. (See Compl. at 14 & Ex. N at
21 53.) It is unclear whether Plaintiff sued on any federal legal
22 theories in his state case (see generally Compl., Ex. M), but he
23 has not alleged any reason why he could not have done so, and
24 none is apparent to the Court. The Complaint thus appears to be
25 duplicative of Plaintiff's pending state case.

26 In the federal court system, "the general principle is to
27 avoid duplicative litigation." Colo. River Water Conservation
28 Dist. v. United States, 424 U.S. 800, 817 (1976). A federal

1 court may decline to exercise jurisdiction over a case when a
2 concurrent, duplicative state case is pending. See id. at 818.
3 Although Colorado River abstention is disfavored in § 1983 cases,
4 see Tovar v. Billmeyer, 609 F.2d 1291, 1294 (9th Cir. 1979), the
5 Ninth Circuit “has not established a categorical prohibition”
6 against it, see Jacobo v. L.A. Cnty., No. CV 11-7212-GW(SSx),
7 2012 WL 13012480, at *4 (C.D. Cal. Feb. 16, 2012). Abstention
8 under Younger v. Harris, 401 U.S. 37, 41 (1971), may also be
9 appropriate when a § 1983 plaintiff has a concurrent state case
10 arising from the same conduct. See Gilbertson v. Albright, 381
11 F.3d 965, 979-80 (9th Cir. 2004) (en banc).

12 Here, the Court need not decide whether any of those
13 doctrines apply because, as discussed below, the Complaint does
14 not state any constitutional claim. See Wall v. Arend, No. C17-
15 5453 BHS, 2017 WL 3534577, at *3 (W.D. Wash. Aug. 17, 2017) (when
16 plaintiff had not yet stated cognizable § 1983 claim, court could
17 dismiss pleading with leave to amend without “conclusively
18 decid[ing]” whether abstention was warranted). In the event
19 Plaintiff is able to adequately plead a constitutional
20 deprivation in an amended pleading, the Court may abstain from
21 considering it pending resolution of his state-court case. See
22 Los Altos El Granada Inv’rs v. City of Capitola, 583 F.3d 674,
23 689-90 (9th Cir. 2009).

24 Plaintiff is further warned that the Rooker-Feldman¹¹ line
25 of cases would bar this Court from hearing any de facto appeal of
26

27 ¹¹ See Rooker v. Fid. Tr. Co., 263 U.S. 413 (1923); D.C. Court
28 of Appeals v. Feldman, 460 U.S. 462 (1983).

1 a state-court judgment.¹² "A de facto appeal exists when a
2 federal plaintiff asserts as a legal wrong an allegedly erroneous
3 decision by a state court, and seeks relief from a state court
4 judgment based on that decision." Bell v. City of Boise, 709
5 F.3d 890, 897 (9th Cir. 2013) (citation omitted). If the action
6 contains a de facto appeal, a district court is barred from
7 deciding not only the issues decided by the state court but also
8 any other issues that are "inextricably intertwined" with the
9 state court's decision. Id. Rooker-Feldman applies even when
10 the challenge to the state court's actions involves federal
11 constitutional issues. See Dubinka v. Judges of Superior Court,
12 23 F.3d 218, 221 (9th Cir. 1994). Accordingly, should the state
13 court decide Plaintiff's case and should he thereafter elect to
14 file an amended pleading, he must allege facts demonstrating that
15 this action is not barred by Rooker-Feldman.

16 **II. The Complaint Does Not State Any § 1983 Claim**

17 Plaintiff seeks redress under the Fourth Amendment on
18 theories of false arrest and – construed liberally – unlawful
19 detention, evidently based on the conduct of Carr or whichever
20 librarian or police officers effectuated his June 21, 2018 arrest
21 and subsequent detention by the LAPD. (See, e.g., Compl. at 5-8,
22 12-13.)

26 ¹² Plaintiff attached to his Complaint a complaint he
27 apparently submitted to the Commission on Judicial Performance
28 asserting that the superior court was wrong to sustain the City's
demurrer in his state-court lawsuit. (See Compl., Ex. N.)

1 A. Legal Standards

2 1. Fourth Amendment

3 An arrest without probable cause violates the Fourth
4 Amendment and gives rise to a claim for damages under § 1983.
5 See, e.g., Rosenbaum v. Washoe Cnty., 663 F.3d 1071, 1076 (9th
6 Cir. 2011); Dubner v. City & Cnty. of S.F., 266 F.3d 959, 964
7 (9th Cir. 2001). "Probable cause to arrest exists when officers
8 have knowledge or reasonably trustworthy information sufficient
9 to lead a person of reasonable caution to believe that an offense
10 has been or is being committed by the person being arrested."
11 Ramirez v. City of Buena Park, 560 F.3d 1012, 1023 (9th Cir.
12 2009) (citation omitted). Probable cause is determined based on
13 the totality of circumstances known to the arresting officers at
14 the time of arrest. Illinois v. Gates, 462 U.S. 213, 238 (1983).
15 Because probable cause is an objective inquiry, the arresting
16 officer's "subjective reason for making the arrest" does not
17 matter; a public, warrantless arrest comports with the Fourth
18 Amendment so long as there was probable cause for a reasonable
19 officer to arrest the suspect for some crime, which need not be
20 the actual offense charged or the one articulated by the
21 arresting officers. Devenpeck v. Alford, 543 U.S. 146, 153-54
22 (2004); see also Arpin v. Santa Clara Valley Transp. Agency, 261
23 F.3d 912, 924 (9th Cir. 2001) (warrantless misdemeanor citizen's
24 arrest requires probable cause). An officer may not accept
25 delivery of a person following a citizen's arrest without
26 "independently investigat[ing]" the claims of the citizen
27 witness. Arpin, 261 F.3d at 924-25.

28 The Fourth Amendment governs a claim for unlawful detention

1 "even beyond the start of legal process." Manuel v. City of
2 Joliet, 137 S. Ct. 911, 920 (2017). To raise such a claim, a
3 plaintiff must show that the officer violated his constitutional
4 rights by detaining or arresting him without probable cause. Id.
5 at 918; Barry v. Fowler, 902 F.2d 770, 772 (9th Cir. 1990).

6 Any Fourth Amendment claim for unlawful detention, like any
7 claim for false arrest, thus depends on an absence of probable
8 cause. See Cabrera v. City of Huntington Park, 159 F.3d 374, 380
9 (9th Cir. 1998) (per curiam). But a prosecutor's subsequent
10 decision to dismiss charges or not to file them at all does not
11 by itself invalidate the legitimacy of an arrest; indeed, a
12 lawful arrest contemporaneously supported by probable cause
13 generally remains so regardless of subsequent developments in the
14 case. See Michigan v. DeFillippo, 443 U.S. 31, 36 (1979);
15 Freeman v. City of Santa Ana, 68 F.3d 1180, 1189 (9th Cir. 1995)
16 (as amended).

17 2. Municipal liability

18 Plaintiff sues only the City and the Library. (See, e.g.,
19 Compl. at 1, 4-5.) Municipalities and local governments are
20 considered "persons" under § 1983 and therefore may be liable for
21 causing a constitutional deprivation. See Monell v. Dep't of
22 Soc. Servs., 436 U.S. 658, 690-91 (1978); see also Long v. Cnty.
23 of L.A., 442 F.3d 1178, 1185 (9th Cir. 2006). Because no
24 respondeat superior liability exists under § 1983, a municipality
25 is liable only for injuries that arise from an official policy or
26 longstanding custom. Monell, 436 U.S. at 694; City of Canton v.
27 Harris, 489 U.S. 378, 385 (1989). A plaintiff must show "that a
28 [municipal] employee committed the alleged constitutional

1 violation pursuant to a formal governmental policy or a
2 longstanding practice or custom which constitutes the standard
3 operating procedure of the local governmental entity." Gillette
4 v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (per curiam)
5 (citation omitted).

6 In addition, a plaintiff must allege facts demonstrating
7 that the policy was "(1) the cause in fact and (2) the proximate
8 cause of the constitutional deprivation." Trevino v. Gates, 99
9 F.3d 911, 918 (9th Cir. 1996). "Liability for improper custom
10 may not be predicated on isolated or sporadic incidents; it must
11 be founded upon practices of sufficient duration, frequency and
12 consistency that the conduct has become a traditional method of
13 carrying out policy." Id.; see also Thompson v. City of L.A.,
14 885 F.2d 1439, 1443-44 (9th Cir. 1989) ("Consistent with the
15 commonly understood meaning of custom, proof of random acts or
16 isolated events are [sic] insufficient to establish custom."),
17 overruled on other grounds by Bull v. City & Cnty. of S.F., 595
18 F.3d 964, 981 (9th Cir. 2010) (en banc). "A custom can be shown
19 or a policy can be inferred from widespread practices or
20 'evidence of repeated constitutional violations for which the
21 errant municipal officers were not discharged or reprimanded.'" Pierce v. Cnty. of Orange, 526 F.3d 1190, 1211 (9th Cir. 2008)
22 (as amended) (quoting Gillette, 979 F.2d at 1349).

24 A plaintiff may also establish municipal liability by
25 demonstrating that the alleged constitutional violation was
26 caused by a failure to train municipal employees adequately. See
27 Harris, 489 U.S. at 388. A plaintiff claiming failure to train
28 must allege facts demonstrating the following:

1 (1) he was deprived of a constitutional right, (2) the
2 [municipality] had a training policy that "amounts to
3 deliberate indifference to the constitutional rights of
4 the persons with whom its police officers are likely to
5 come into contact," and (3) his constitutional injury
6 would not have happened had the [municipality] properly
7 trained those officers.

8 Blankenhorn v. City of Orange, 485 F.3d 463, 484 (9th Cir. 2007)
9 (citation and alterations omitted).

10 B. Analysis

11 1. The Complaint does not state any Fourth Amendment
12 claim

13 Plaintiff's claims fail because he has not adequately
14 pleaded any Fourth Amendment injury, much less one that resulted
15 from a failure to train City librarians or any municipal policy,
16 custom, or practice. He admits that he was "ruminati[ng]"
17 "audibl[y]" in the library (Compl. at 6), "adjacent to a
18 partition-less children's section" (id. at 12), and insisted on
19 continuing to do so after a librarian had put him on notice that
20 he needed to stop (id. at 6). Regardless of who arrested
21 Plaintiff (see supra note 5), officers on the scene "talked to
22 the librarian," asked Plaintiff about his conduct, and warned him
23 that if he did not leave he would be arrested and escorted from
24 the building (see Compl. at 6). He repeatedly refused. (See id.
25 at 6-7.) Probable cause therefore existed to arrest him for
26 violating section 602.1(b), which makes it a misdemeanor to
27 interfere with the lawful business of a public agency and refuse
28 to leave the premises when asked. See Devenpeck, 543 U.S. at

1 153-54; Arpin, 261 F.3d at 924-25.

2 That Plaintiff was apparently cited for a violation of
3 section 602(q), which does not appear to apply to his alleged
4 conduct, does not destroy the existence of probable cause and
5 does not invalidate his arrest. See Devenpeck, 543 U.S. at 153-
6 54. Moreover, because probable cause existed, Plaintiff cannot
7 state a constitutional claim based on his less-than-three-hour
8 detention. See Manuel, 137 S. Ct. at 918 (valid probable-cause
9 determination provides "constitutionally adequate justification"
10 for detention before legal process has begun). It does not
11 matter that the City Attorney apparently ultimately decided not
12 to file charges. See DeFillippo, 443 U.S. at 36.

13 Thus, Plaintiff has not alleged any Fourth Amendment
14 violation under any theory. Should he decide to pursue such a
15 claim in an amended pleading, he must allege specific facts
16 showing that he meets the standards set forth above in Section
17 II.A.

18 2. The Complaint fails to state any Monell claim

19 Plaintiff has named no individual Defendants and proceeds
20 solely on a municipal-liability theory (see Compl. at 1, 4),
21 apparently primarily based on a failure to train City librarians
22 or other employees (see id. at 13). But as discussed above, he
23 has not adequately pleaded any constitutional deprivation. See
24 City of L.A. v. Heller, 475 U.S. 796, 799 (1986) (no Monell
25 liability absent showing of constitutional injury); Quintanilla
26 v. City of Downey, 84 F.3d 353, 355 (9th Cir. 1996) (same). Nor
27 has he alleged facts showing that any Defendant's training policy
28 amounted to deliberate indifference to his constitutional

1 rights,¹³ or that more or different training would have prevented
2 any constitutional violation. Cf. Blankenhorn, 485 F.3d at 484.

3 Plaintiff also alleges that the library had a posted policy
4 warning patrons that they could be arrested under Penal Code
5 section 602.1(b) if they behaved disruptively, disobeyed library
6 rules, or refused to leave when asked. (See Compl. at 4, 7; see
7 also id., Ex. B.) One of those rules apparently prohibited
8 patrons from talking on cell phones in the library. (See Compl.
9 at 6.) He does not specifically allege that any of those rules
10 or policies led to his arrest. But even if he had, that could
11 not have proximately caused him any Fourth Amendment deprivation
12 because, as discussed above, Plaintiff has not adequately pleaded
13 any such deprivation; indeed, he admits that he was talking out
14 loud in the library and continued to do so after having been
15 asked to stop. (See id. at 6.) Plaintiff nowhere alleges that
16 section 602.1(b) (or for that matter section 602(q) or Municipal
17 Code section 41.24(d)) is unconstitutional in any way, and no
18 such infirmity is apparent to the Court. Similar provisions
19 allowing for disruptive individuals to be removed from public
20 spaces have withstood constitutional challenge. See, e.g., Hunt
21 v. City of L.A., No. CV 12-7261 DSF (SHx), 2012 WL 12548355, at
22 *3, *5-7 (C.D. Cal. Dec. 6, 2012) (upholding rules requiring
23 "civility" and "decorum" against vagueness and overbreadth
24

25 ¹³ Indeed, at one point Plaintiff characterizes the City's and
26 library's training policy as "gross[ly] negligen[t]." (Compl. at
27 4.) That is not sufficient for § 1983 liability. See Daniels v.
28 Williams, 474 U.S. 327, 333 (1986) (injuries to life, liberty, or
property inflicted by governmental negligence not addressed by
Constitution).

1 challenges from plaintiff who had been ejected from City
2 recreation-board meeting for disruptive behavior).¹⁴

3 Plaintiff therefore has not stated any municipal-liability
4 claim for any Fourth Amendment violation. Should he elect to
5 pursue such claims in an amended pleading, he must allege
6 specific facts showing that he was deprived of some
7 constitutional right and that the deprivation was proximately
8 caused by some municipal policy, custom, or practice. See
9 Monell, 436 U.S. at 694; Trevino, 99 F.3d at 918. As Monell
10 liability for a Fourth Amendment violation is apparently his only
11 federal-law theory of relief, the Court defers screening of his
12 state-law claims until he has adequately pleaded a federal cause
13 of action. See Herman Family Revocable Tr. v. Teddy Bear, 254
14 F.3d 802, 805 (9th Cir. 2001).¹⁵

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19 ¹⁴ Further, Plaintiff appears to contend that the library
20 acted unlawfully because it violated the posted policy, not because
21 the policy itself was flawed. (See, e.g., Compl. at 8 (describing
22 email to Feuer "as to what was transpiring at this rogue library"),
12-13 (librarian Carr acted "outside of her rights" because he was
cited for violating § 602(q) rather than § 602.1(b)).)

23 ¹⁵ The Court notes, however, that in bringing a state-law
24 tort claim against a public entity or employee, a plaintiff must
25 plead compliance with the California Tort Claims Act or the claim
26 is subject to dismissal. See State v. Super. Ct. (Bodde), 32 Cal.
27 4th 1234, 1239, 1245 (2004); Mangold v. Cal. Pub. Utils. Comm'n, 67
28 F.3d 1470, 1477 (9th Cir. 1995). This requirement applies in
federal court. See Karim-Panahi v. L.A. Police Dep't, 839 F.2d
621, 627 (9th Cir. 1988). Plaintiff's failure to allege compliance
with the Tort Claims Act could lead to dismissal of his state-law
tort claims.

1 **III. Plaintiff's Public-Records Requests Are Premature or Not**
2 **Cognizable Under § 1983**

3 Plaintiff seeks "discovery" under FOIA and state public-
4 records statutes. (See Compl. at 14.) To the extent his request
5 is construed as seeking a discovery order from the Court, that
6 request is denied as premature. If one of Plaintiff's complaints
7 is ordered served and any Defendant files an answer, the Court
8 may thereafter issue an order allowing discovery to begin.

9 If Plaintiff wishes to make a request under FOIA or the
10 California Public Records Act, he may do so using the procedures
11 described in those statutes and does not need the Court's
12 permission. See generally 5 U.S.C. § 552; Cal. Gov't Code
13 § 6253; see also U.S. Dep't of Justice, FOIA.gov, [https://](https://www.foia.gov)
14 www.foia.gov (providing portal for users to create FOIA request
15 online); Cal. Att'y Gen.'s Off., Summary of the California Public
16 Records Act of 2004 (Aug. 2004), [http://ag.ca.gov/publications/](http://ag.ca.gov/publications/summary_public_records_act.pdf)
17 [summary_public_records_act.pdf](http://ag.ca.gov/publications/summary_public_records_act.pdf).

18 *****

19 If Plaintiff desires to pursue his claims, he is ORDERED to
20 file a first amended complaint within 28 days of the date of this
21 order, remedying the deficiencies discussed above. The FAC
22 should bear the docket number assigned to this case, be labeled
23 "First Amended Complaint," and be complete in and of itself,
24 without reference to the original Complaint or any other
25 pleading, attachment, or document.

26 Plaintiff is advised that he may wish to seek help from one
27 of the federal "pro se" clinics in this District. The clinics
28 offer free on-site information and guidance to individuals who

1 are representing themselves (proceeding pro se) in federal civil
2 actions. They are administered by nonprofit law firms, not by
3 the Court. The clinic closest to Plaintiff is located in Suite
4 170 of the Edward R. Roybal Federal Building and U.S. Courthouse,
5 255 East Temple Street, Los Angeles, CA 90012. It is open
6 Mondays, Wednesdays, and Fridays, 9:30 a.m. to 12 p.m. and 2 to 4
7 p.m. Useful information is also available on the clinics'
8 website, <http://prose.cacd.uscourts.gov/los-angeles>.

9 **Plaintiff is warned that if he fails to timely file a**
10 **sufficient FAC, the Court may dismiss this action on the grounds**
11 **set forth above or for failure to diligently prosecute.**¹⁶

12
13 DATED: December 19, 2018



14 JEAN ROSENBLUTH
15 U.S. MAGISTRATE JUDGE
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24 ¹⁶ If Plaintiff believes this order erroneously disposes of
25 any of his claims, he may file objections with the district judge
26 within 20 days of the date of the order. See Bastidas v. Chappell,
27 791 F.3d 1155, 1162 (9th Cir. 2015) ("When a magistrate judge
28 believes she is issuing a nondispositive order, she may warn the
litigants that, if they disagree and think the matter dispositive,
they have the right to file an objection to that determination with
the district judge.").