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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ORONDE LONDON,
Plaintiff,
v.
CITY OF REDLANDS,
Defendant(s).

Case No. EDCV 17-0185-JFW (KK)

FINAL REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE

This Final Report and Recommendation is submitted to the Honorable John F. Walter, United States District Judge, pursuant to 28 U.S.C. § 636 and General Order 05-07 of the United States District Court for the Central District of California.

I.

SUMMARY OF RECOMMENDATION

On May 11, 2017, Plaintiff Oronde London (“Plaintiff”), proceeding *pro se*, filed a Second Amended Complaint (“SAC”) pursuant to 42 U.S.C. § 1983 (“Section 1983”), against defendant City of Redlands (“Defendant”). On June 1, 2017, Defendant filed a Motion to Dismiss the SAC. For the reasons set forth below, the Court recommends GRANTING Defendant’s Motion to Dismiss and dismissing the action with prejudice and without leave to amend.

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1 On June 1, 2017, Defendant filed a Motion to Dismiss arguing the SAC
2 should be dismissed because Plaintiff lacks standing¹ and has failed to allege facts
3 sufficient to state a claim for violations of his Fourteenth Amendment rights. Dkt.
4 43, MTD. On June 5, 2017, Plaintiff filed an Opposition. Dkt. 45. On June 15,
5 2017, Defendant filed a Reply. Dkt. 46. The matter thus stands submitted.

6 III.

7 **ALLEGATIONS OF THE SECOND AMENDED COMPLAINT**

8 Plaintiff alleges he is a private citizen seeking to determine whether
9 Defendant has complied with all “applicable provisions of Federal, State, and local
10 law relating to building standards, permits, and inspections.” SAC at 5. From
11 August 2015 to October 2016, Plaintiff alleges he submitted an online “building and
12 safety complaint,” one in-person request, and three email requests seeking permits
13 for various buildings in Redlands. See id. at 3-4. Plaintiff claims he received three
14 letters from the Office of the City Manager acknowledging two out of his three
15 email requests and his one in-person request for permits. Id. Plaintiff claims he
16 received some, but not all of the permits he requested. Id. at 5-6. As a result,
17 Plaintiff alleges Defendant has violated his Fourteenth Amendment right to Due
18 Process by failing to (1) acknowledge all of Plaintiff’s requests for public records
19 and provide requested public records in a timely fashion; (2) investigate a private
20 citizen complaint; and (3) comply with its own municipal code. Id. In addition,
21 Plaintiff appears to allege Defendant has violated his Fourteenth Amendment right
22 to Equal Protection based on an alleged right to have his “request/complaint
23 treated the same way as similar cases at the City of Redlands.” Id. at 5.

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27 ¹ Defendant argues Plaintiff lacks standing “to proceed in this federal court”
28 because he “has shown no injury-in-fact.” MTD at 7. As Plaintiff has failed to
identify any actions by Defendant that violate a protected constitutional interest,
the Court declines to rule on the issue of standing at this time.

1 IV.

2 **STANDARD OF REVIEW**

3 A complaint may be dismissed for failure to state a claim pursuant to Federal
4 Rule of Civil Procedure 12(b)(6) “where there is no cognizable legal theory or an
5 absence of sufficient facts alleged to support a cognizable legal theory.” Zamani v.
6 Carnes, 491 F.3d 990, 996 (9th Cir. 2007) (citation omitted). In considering
7 whether a complaint states a claim, a court must accept as true all of the material
8 factual allegations in it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011).
9 However, the Court need not accept as true “allegations that are merely
10 conclusory, unwarranted deductions of fact, or unreasonable inferences.” In re
11 Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted).

12 Although a complaint need not include detailed factual allegations, it “must
13 contain sufficient factual matter, accepted as true, to state a claim to relief that is
14 plausible on its face.” Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011)
15 (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868
16 (2009)). A claim is facially plausible when it “allows the court to draw the
17 reasonable inference that the defendant is liable for the misconduct alleged.” Id.
18 (citation omitted). The complaint “must contain sufficient allegations of
19 underlying facts to give fair notice and to enable the opposing party to defend itself
20 effectively.” Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

21 “A document filed pro se is to be liberally construed, and a pro se complaint,
22 however inartfully pleaded, must be held to less stringent standards than formal
23 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
24 2008) (citation omitted). The Court has “an obligation where the p[laintiff] is pro
25 se, particularly in civil rights cases, to construe the pleadings liberally and to afford
26 the petitioner the benefit of any doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th
27 Cir. 2012) (citation omitted).

1 If the court finds the complaint should be dismissed for failure to state a
2 claim, the court has discretion to dismiss with or without leave to amend. Lopez v.
3 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted
4 if it appears possible that the defects in the complaint could be corrected, especially
5 if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,
6 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint
7 cannot be cured by amendment, the court may dismiss without leave to amend.
8 Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th
9 Cir. 2009).

10 V.

11 **DISCUSSION**

12 **A. PLAINTIFF HAS FAILED TO IDENTIFY ANY DEPRIVATION OF**
13 **A PROTECTED CONSTITUTIONAL INTEREST AND**
14 **THEREFORE FAILS TO STATE A FOURTEENTH AMENDMENT**
15 **DUE PROCESS CLAIM**

16 **1. Applicable Law**

17 The Due Process Clause of the Fourteenth Amendment protects individuals
18 against deprivations of life, liberty, or property that “shocks the conscience” or
19 “interferes with rights implicit in the concept of ordered liberty.” United States v.
20 Salerno, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987); U.S. Const.
21 amend. XIV, § 1. It “affords not only a procedural guarantee against the
22 deprivation of ‘liberty,’ but likewise protects substantive aspects of liberty against
23 unconstitutional restrictions by the state.” Kelley v. Johnson, 425 U.S. 238, 244,
24 96 S. Ct. 1440, 47 L. Ed. 2d 708 (1976).

25 “A threshold requirement to a substantive or procedural due process claim is
26 the plaintiff’s showing of a liberty or property interest protected by the
27 Constitution.” Stiesberg v. State of Cal., 80 F.3d 353, 356 (9th Cir. 1996) (quoting
28 Wedges/Ledges of California, Inc. v. City of Phoenix, Ariz., 24 F.3d 56, 62 (9th

1 Cir. 1994)). To have a property interest, a plaintiff must allege “a legitimate claim
2 of entitlement.’” Nunez v. City of Los Angeles, 147 F.3d 867, 872 (9th Cir. 1998)
3 (quoting Bd. of Regents of State Colleges v. Roth, 408 U.S. 564, 577, 92 S. Ct.
4 2701, 33 L. Ed. 2d 548 (1972)). A liberty interest, on the other hand, “may be
5 derived from the Due Process Clause itself or from laws of the states.” Browning
6 v. Vernon, 44 F.3d 818, 821 (9th Cir. 1995).

7 To establish a substantive due process claim, a plaintiff must allege, in
8 addition to a deprivation of a constitutionally protected liberty or property interest,
9 “conscious shocking behavior by the government” that results in the deprivation of
10 the plaintiff’s life, liberty, or property. Brittain v. Hansen, 451 F.3d 982, 991 (9th
11 Cir. 2006). A procedural due process claim, on the other hand, requires a plaintiff
12 to allege both a deprivation of a constitutionally protected liberty or property
13 interest and “a denial of adequate procedural protections.” Brewster v. Bd. of
14 Educ., 149 F.3d 971, 982 (9th Cir. 1998). The failure to follow mandatory
15 procedures does not by itself offend the constitution. See Smith v. Noonan, 992
16 F.2d 987, 989 (9th Cir. 1993) (“[W]e have held that ‘procedural requirements,
17 even if mandatory, do not raise a constitutionally cognizable liberty interest.’”
18 (citation omitted)). Rather, there must be allegations that the procedures
19 themselves were inadequate to protect a valid liberty interest. See Buckley v.
20 Gomez, 36 F. Supp. 2d 1216, 1222 (S.D. Cal. 1997), aff’d, 168 F.3d 498 (9th Cir.
21 1999).

22 2. Analysis

23 Here, Plaintiff fails to allege any facts showing he has been deprived of a
24 constitutionally protected liberty or property interest. Plaintiff alleges Defendant is
25 denying him due process by failing to (1) acknowledge all of Plaintiff’s requests for
26 public records and provide requested public records in a timely fashion; (2)
27 investigate a private citizen complaint; and (3) comply with its own Municipal
28 Code. SAC at 5-6. However, none of these alleged actions implicate a

1 constitutional right of which Plaintiff has been deprived. Thus, as discussed below,
2 because Plaintiff has failed to meet the “threshold requirement to a substantive or
3 procedural due process claim,” his Fourteenth Amendment claim is subject to
4 dismissal. Stiesberg, 80 F.3d at 356.

5 First, as to Defendant’s alleged failure to acknowledge Plaintiff’s public
6 records requests and provide records in a timely fashion, Plaintiff fails to identify a
7 protected constitutional liberty or property interest. See SAC at 5. The
8 Fourteenth Amendment “do[es] not guarantee the public a right of access to
9 information generated or controlled by government.” Houchins v. KQED, Inc.,
10 438 U.S. 1, 16, 98 S. Ct. 2588, 57 L. Ed. 2d 553 (1978). Thus, Plaintiff does not
11 have a constitutionally-protected right to access government records, much less a
12 constitutionally-protected right to have his records *request acknowledged* or a right to
13 have records *provided in a timely fashion*.² Accordingly, Plaintiff has failed to raise a
14 Fourteenth Amendment procedural or substantive due process claim based on
15 Defendant’s failure to acknowledge his records request or provide his records in a
16 timely fashion.

17 Second, as to Defendant’s alleged failure to investigate a private citizen
18 complaint, Plaintiff again fails to identify a protected constitutional liberty or
19 property interest. Plaintiff alleges he has “informed the City Manager of possible
20 building standard violations, in addition to personnel actions,” but has not received
21 any response. SAC at 5-6. Additionally, Plaintiff conclusorily claims he is entitled
22 “to have a fair and impartial fact-finding by the city of Redlands when such
23 request/complaint are made by private citizens.” Id. at 5. However, the U.S.

24
25 ² To the extent Plaintiff is attempting to state a claim based on Defendant’s failure
26 to comply with the requirements of the California Public Records Act (“CPRA”),
27 Plaintiff’s claim also fails. “Plaintiff’s exclusive remedy under the CPRA is to file a
28 writ of mandamus in state court.” Brooks v. Vallejo City Unified Sch. Dist., No.
2:09-CV-1815-MCE-JFM, 2009 WL 10441783, at *3 (E.D. Cal. Oct. 30, 2009) (“If
plaintiff believes he has not received all of the public documents he requested, he
must pursue those claims in the state court mandamus actions.”); Cal. Govt. Code
§ 6259(d).

1 Constitution “does not impose any affirmative obligation on the government to
2 listen[or] to respond [to a citizen complaint].” See Smith v. Arkansas State
3 Highway Emp., Local 1315, 441 U.S. 463, 465, 99 S. Ct. 1826, 60 L. Ed. 2d 360
4 (1979); Page v. Stanley, No. CV 11-2255-CAS (SS), 2013 WL 2456798, at *9 (C.D.
5 Cal. June 5, 2013) (holding the Constitution “does not guarantee that there will be
6 any government response to a petition or that the government will take any action
7 regarding the relief demanded by the petitioner. Specifically, the First Amendment
8 does not impose an affirmative obligation on the government to consider, respond
9 to, or grant any relief on a citizen’s petition for redress of grievances”). Thus,
10 because there is no recognized constitutional right to a government investigation,
11 Plaintiff’s allegations that Defendant is not responding to his citizen complaints
12 fails to implicate a recognized constitutional right and, therefore, does not state
13 either a procedural or substantive due process claim.

14 Third, as to Defendant’s failure to comply with its own city ordinance and
15 municipal codes, Plaintiff fails to identify a protected liberty or property interest of
16 which *he* has been deprived. Plaintiff claims Defendant has failed to “enforce
17 building codes,” and has “neglected to verify work done at different buildings”
18 identified by Plaintiff. Id. at 5-6. Additionally, Plaintiff alleges Defendant is acting
19 in “‘bad faith’ with intentional deception” and has failed “to meet an obligation or
20 duty.” Id. at 6. However, Plaintiff does not allege that any of these actions or
21 inactions have deprived *Plaintiff* of a constitutionally-protected liberty or property
22 interest.

23 Moreover, even assuming Plaintiff raised a constitutionally-protected liberty
24 interest of which he has been deprived due to Defendant’s failure to comply with
25 its own municipal codes, the failure alone is insufficient to raise a procedural or
26 substantive due process claim. First, as to a procedural due process claim, Plaintiff
27 does not allege he has been denied notice and an opportunity to be heard prior to
28 any constitutional deprivation. See Mullane v. Cent. Hanover Bank & Tr. Co., 339

1 U.S. 306, 313, 70 S. Ct. 652, 94 L. Ed. 865 (1950). Second, as to a substantive due
2 process claim, a state law or municipal code violation committed by a government
3 actor is not alone sufficient to raise a substantive due process claim. See Shanks v.
4 Dressel, 540 F.3d 1082, 1089 (9th Cir. 2008) (holding that the “assumption that
5 every state law violation invariably gives rise to a substantive due process claim is
6 inconsistent with the principle that substantive due process is not a ‘font of tort
7 law’ that superintends all official decision making” (citing Cty. of Sacramento v.
8 Lewis, 523 U.S. 833, 848, 118 S. Ct. 1708, 140 L. Ed. 2d 1043 (1998)). Absent any
9 facts to show “egregious official conduct” that amounts to an “‘abuse of power’
10 lacking any reasonable justification in the service of a legitimate governmental
11 objective,” Plaintiff fails to state a substantive due process claim. Thus, Plaintiff’s
12 allegations Defendant violated his Fourteenth Amendment right for neglecting to
13 comply with its own city ordinances and municipal code fail to state either a
14 procedural or substantive due process claim. Id. (citing Lewis, 523 U.S. at 846).

15 **B. PLAINTIFF FAILS TO STATE A FOURTEENTH AMENDMENT**
16 **EQUAL PROTECTION CLAIM**

17 **1. Applicable Law**

18 “The Equal Protection Clause of the Fourteenth Amendment commands
19 that no State shall ‘deny to any person within its jurisdiction the equal protection of
20 the laws,’ which is essentially a direction that all persons similarly situated should
21 be treated alike.” City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432,
22 439, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985) (quoting Plyler v. Doe, 457 U.S. 202,
23 216, 102 S. Ct. 2382, 72 L. Ed. 2d 786 (1982)). In order to state a Section 1983
24 equal protection claim, a plaintiff must allege he was treated differently from others
25 who were similarly situated without a rational basis or discriminated against based
26 on his membership in a protected class. See Serrano v. Francis, 345 F.3d 1071,
27 1082 (9th Cir. 2003) (requirements for Section 1983 equal protection claim based
28 on membership in protected class); Gallo v. Burson, 568 F. App’x 516, 517 (9th Cir.

1 2014) (affirming district court dismissal of inmate’s equal protection claim).
2 “Similarly situated” persons are those “who are in all relevant aspects alike.”
3 Nordlinger v. Hahn, 505 U.S. 1, 10, 112 S. Ct. 2326, 120 L. Ed. 2d 1 (1992).

4 **2. Analysis**

5 Here, to the extent Plaintiff is attempting to raise a Fourteenth Amendment
6 Equal Protection claim, this claim is also subject to dismissal. Plaintiff fails to
7 allege any facts to show he is a member of a protected class or has been treated
8 differently from others who are similarly situated. Instead, Plaintiff merely claims
9 that the Fourteenth Amendment requires “[t]reating similar persons in [a] similar
10 manner,” and that he has a right “to have one’s request/complaint treated the
11 same way as similar cases at the City of Redlands.” SAC at 5; Opposition at 5.
12 Thus, absent any factual allegations establishing differing treatment, Plaintiff’s
13 Fourteenth Amendment Equal Protection claim should be dismissed.

14 **C. THE SAC SHOULD BE DISMISSED WITHOUT LEAVE TO**
15 **AMEND**

16 As discussed in Sections V.A-B, Plaintiff’s Fourteenth Amendment claims
17 fail. The SAC’s allegations suffer from the same pleading deficiencies the Court
18 identified when it dismissed the Complaint with leave to amend. See Dkt. 32.
19 Thus, despite having an opportunity to correct the deficiencies previously
20 identified by the Court, Plaintiff has failed to do so. In addition, none of the
21 arguments in Plaintiff’s opposition to the Motion to Dismiss suggest he might be
22 able to correct the deficiencies. Moreover, Plaintiff has now had three
23 opportunities to file a proper and legally sufficient complaint, but has failed to do
24 so. See Dkt. 32, 37.

25 In light of Plaintiff’s continued failure to address the pleading deficiencies
26 identified by the Court, the Court recommends dismissing the SAC without leave
27 to amend and with prejudice for failure to state a claim. See Ismail v. County of
28 Orange, 917 F. Supp. 2d 1060, 1066 (C.D. Cal. 2012) (“[A] district court’s

1 discretion over amendments is especially broad ‘where the court has already given
2 a plaintiff one or more opportunities to amend his complaint.’” (quoting DCD
3 Programs, Ltd. v. Leighton, 833 F.2d 183, 186 n.3 (9th Cir. 1987)); see also Zavala
4 v. Bartnik, 348 F. App’x 211, 213 (9th Cir. 2009) (“Dismissal with prejudice was
5 proper because Zavala was given two prior opportunities to amend his complaint in
6 order to correct the deficiencies identified by the district court but failed to do
7 so.”).

8 **VI.**

9 **RECOMMENDATION**

10 IT IS THEREFORE RECOMMENDED that the Court issue an Order: (1)
11 accepting this Final Report and Recommendation; (2) GRANTING Defendants’
12 Motion to Dismiss [Dkt. 59]; and (3) directing that Judgement be entered
13 dismissing the action with prejudice and without leave to amend.

14
15 Dated: September 05, 2017



16 HONORABLE KENLY KIYA KATO
17 United States Magistrate Judge