UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GERALD BAROS,

Plaintiff,

v.

SAN BERNARDINO COUNTY DEPUTY SHERIFF JOHN DOE 1, et al.

Defendants.

Case No. EDCV 17-948 R(JC)

ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

I. BACKGROUND AND SUMMARY

On May 15, 2017, Gerald Baros ("plaintiff"), who is in custody, is proceeding without a lawyer (*i.e.*, "*pro se*"), and has been granted leave to proceed *in forma pauperis*, filed a Civil Rights Complaint ("Complaint") pursuant to 42 U.S.C. § 1983 ("Section 1983") against six unnamed individual defendants connected with the San Bernardino County Jail Glen Helen Facility where plaintiff – apparently then a pretrial detainee – was formerly housed. More specifically, plaintiff essentially claims that on or about June 22, 2013, San Bernardino County Sheriff's Department ("SBSD") Deputies John Does 1-4, SBSD Deputy Jane Doe, and SBSD Sergeant Doe – all of whom are sued in their individual capacities only –

subjected him to excessive force, failed to intervene when others subjected him to excessive force, and acted to deter him from reporting the use of excessive force against himself and others in violation of his Fourteenth Amendment right to due process and his First Amendment right to seek redress for grievances. Plaintiff seeks monetary and injunctive relief.

As the Complaint is deficient in multiple respects, including those detailed below, it is dismissed with leave to amend.

II. PERTINENT LAW

A. The Screening Requirement

As plaintiff is a prisoner proceeding *in forma pauperis* on a complaint against a governmental defendant, the Court must screen the Complaint, and is required to dismiss the case at any time it concludes the action is frivolous or malicious, 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)(B), 1915A; 42 U.S.C. § 1997e(c).

When screening a complaint to determine whether it states any claim that is viable (*i.e.*, capable of succeeding), the Court applies the same standard as it would when evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015) (citation omitted). Rule 12(b)(6), in turn, is read in conjunction with Rule 8(a) of the Federal Rules of Civil Procedure ("Rule 8"). Zixiang Li v. Kerry, 710 F.3d 995, 998-99 (9th Cir. 2013). Under Rule 8, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While Rule 8 does not require detailed factual allegations, at a minimum a complaint must allege enough specific facts to provide *both* "fair notice" of the particular claim being asserted *and* "the grounds upon which [that claim] rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 & n.3 (2007) (citation and quotation marks omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)

(Rule 8 pleading standard "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation") (citing id. at 555).

In addition, under Rule 10 of the Federal Rules of Civil Procedure ("Rule 10"), a complaint, among other things, must (1) state the names of "all the parties" in the caption; and (2) state a party's claims in sequentially "numbered paragraphs, each limited as far as practicable to a single set of circumstances." Fed. R. Civ. P. 10(a), (b).

Thus, to avoid dismissal, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir. 2014) (citations and quotation marks omitted). A claim is "plausible" when the facts alleged in the complaint would support a reasonable inference that the plaintiff is entitled to relief from a specific defendant for specific misconduct. Iqbal, 556 U.S. at 678 (citation omitted). Allegations that are "merely consistent with" a defendant's liability, or reflect only "the mere possibility of misconduct" do not "*show[]* that the pleader is entitled to relief" (as required by Fed. R. Civ. P. 8(a)(2)), and thus are insufficient to state a claim that is "plausible on its face." Iqbal, 556 U.S. at 678-79 (citations and quotation marks omitted). At this preliminary stage, "well-pleaded factual allegations" in a complaint are assumed true, while "[t]hreadbare recitals of the elements of a cause of action" and "legal conclusion[s] couched as a factual allegation" are not. Id. (citation and quotation marks omitted); Jackson v. Barnes, 749 F.3d 755, 763 (9th Cir. 2014) ("mere legal conclusions 'are not entitled to the assumption of truth'") (quoting id.), cert. denied, 135 S. Ct. 980 (2015). In addition, the Court is "not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint," Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1295-96 (9th Cir. 1998) (citation omitted), and "need not [] accept as true allegations that contradict matters properly subject to judicial notice or by exhibit,"

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Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.), amended on denial of reh'g, 275 F.3d 1187 (9th Cir. 2001) (citation omitted).

Pro se complaints are interpreted liberally to give plaintiffs "the benefit of any doubt." Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation marks omitted). If a *pro se* complaint is dismissed because it does not state a claim, the court must freely grant "leave to amend" (that is, give the plaintiff a chance to file a new, corrected complaint) if it is "at all possible" that the plaintiff could fix the identified pleading errors by alleging different or new facts. Cafasso v. General Dynamics C4 Systems, Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) (citation omitted); Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc) (citations and internal quotation marks omitted).

B. Section 1983

To state a claim under Section 1983, a plaintiff must allege that a defendant, while acting under color of state law, caused a deprivation of the plaintiff's federal rights. 42 U.S.C. § 1983; West v. Atkins, 487 U.S. 42, 48 (1988) (citations omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (citation omitted). There is no vicarious liability in Section 1983 lawsuits. Iqbal, 556 U.S. at 676 (citing, *inter alia*, Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 691 (1978)). Hence, a government official – whether subordinate or supervisor – may be held liable under Section 1983 only when his or her own actions have caused a constitutional deprivation. OSU Student Alliance v. Ray, 699 F.3d 1053, 1069 (9th Cir. 2012) (citing id.), cert. denied, 134 S. Ct. 70 (2013). Allegations regarding causation "must be individualized and focus on the duties and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988) (citations omitted).

An individual "causes" a constitutional deprivation when he or she (1) "does an affirmative act, participates in another's affirmative acts, or omits to perform an

act which he [or she] is legally required to do that causes the deprivation"; or (2) "set[s] in motion a series of acts by others which the [defendant] knows or reasonably should know would cause others to inflict the constitutional injury." Lacey v. Maricopa County, 693 F.3d 896, 915 (9th Cir. 2012) (en banc) (quoting Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978)) (quotation marks omitted).

Similarly, a government official may be held individually liable under Section 1983 for acts taken in a supervisory capacity, but only when the supervisor's own misconduct caused an alleged constitutional deprivation. See Iqbal, 556 U.S. at 676, 677 ("Absent vicarious liability, each Government official, his or her title notwithstanding, is only liable for his or her own misconduct."); OSU Student Alliance, 699 F.3d at 1069 (supervisor liable under Section 1983 only if "he . . . engaged in culpable action or inaction himself") (citing id. at 676). A supervisor may "cause" a constitutional deprivation for purposes of Section 1983 liability, if he or she (1) personally participated in or directed a subordinate's constitutional violation; or (2) was not "physically present when the [plaintiff's] injury occurred," but the constitutional deprivation can, nonetheless, be "directly attributed" to the supervisor's own wrongful conduct. See Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011), cert. denied, 132 S. Ct. 2101 (2012).

C. Excessive Force/Failure to Intervene

The Due Process Clause of the Fourteenth Amendment protects pretrial detainees from the use of excessive force that amounts to punishment. Graham v. Connor, 490 U.S. 386, 395 n.10 (1989). Although the Supreme Court has not expressly decided whether the Fourth Amendment's prohibition on unreasonable searches and seizures continues to protect individuals during pretrial detention, the Ninth Circuit has determined that the Fourth Amendment sets the applicable constitutional limitations for considering claims of excessive force during pretrial

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detention. Gibson v. County of Washoe, 290 F.3d 1175, 1197 (9th Cir. 2002), cert. denied, 537 U.S. 1106 (2003) (citation omitted).

Under the Fourth Amendment, officers may only use such force as is "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. Graham, 490 U.S. at 397. Accordingly, the court must carefully balance the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake to determine whether the force used was reasonable. Id. at 396.

As noted in Lolli v. County of Orange, 351 F.3d 410, 415 n.4 (9th Cir. 2003), Graham directs courts to pay careful attention to the facts of the particular case, including "'the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight,'" although "[i]n the context of pretrial detention rather than arrest, it is clear that all the factors mentioned in Graham . . . will not necessarily be relevant." Gibson, 290 F.3d at 1197 & n.21 (quoting Graham, 490 U.S. at 396).

A law enforcement or prison official who does not himself/herself use excessive force, may nonetheless be liable as an "integral participant" if he/she has "some fundamental involvement" in the use of excessive force. Rosales v. County of Los Angeles, 650 Fed. Appx. 546, 549 (9th Cir. 2016) (citing Blankenhorn v. City of Orange, 485 F.3d 463, 481 n.12 (9th Cir. 2007) and Boyd v. Benton County, 374 F.3d 773, 780 (9th Cir. 2004)). In the same vein, a prison official can violate a prisoner's constitutional rights by failing to intervene to stop a beating. See Lolli, 351 F.3d at 418 (Failure of jail supervisor – who was present during subordinates' alleged use of excessive force against pretrial detainee – to intervene to bring subordinates under control could subject him to liability under Section 1983); United States v. Robins v. Meechum, 60 F.3d 1436, 1442 (9th Cir. 1995) ("a prison

official can violate a prisoner's Eighth Amendment rights by failing to intervene" when another official acts unconstitutionally).

D. First Amendment Right to Seek Redress

Prisoners have a First Amendment right "to petition the government for a redress of [] grievances" and, accordingly, "to file grievances against prison officials." Silva v. Di Vittorio, 658 F.3d 1090, 1101-02 (9th Cir. 2011) (citation omitted), abrogated on other grounds as stated in Richey v. Dahne, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015); Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012). This right to petition for the redress of grievances includes the specific right "to meaningful access to the courts[.]" Silva, 658 F.3d at 1101-02; Bounds v. Smith, 430 U.S. 817, 821 (1977) (well-established that prisoners have a constitutional right of access to the courts), abrogated in part on other grounds by, Lewis v. Casey, 518 U.S. 343, 354 (1996).

The constitutional right of access to the courts generally requires prison officials to ensure that prisoners have the "capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." Lewis, 518 U.S. at 356. To that end, depending on the circumstances, prison officials may be required affirmatively to "help prisoners exercise their rights" (*e.g.*, provide reasonable access to "adequate law libraries or adequate assistance from persons trained in the law"), or simply to refrain from "active interference" in prisoner litigation. Silva, 658 F.3d at 1102 (citation omitted).[1]

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[1]Inmates do not, however, have a special First Amendment right to provide legal assistance to fellow inmates. Shaw v. Murphy, 532 U.S. 223, 225-32 (2001); see also Manago v. Gonzalez, 2012 WL 6628902, *9 (E.D. Cal. Dec. 19, 2012) (plaintiff's communications assisting fellow inmates with their legal activities not protected activity). Nor can inmates "vicariously assert [First Amendment] protection on each other's behalf." Blaisdell v. Frappiea, 729 F.3d 1237, 1244 (9th Cir. 2013) (noting "it is far from clear that 'the right to provide legal advice follows from a right to receive legal advice'"); see also Hunter v. Heath, 26 Fed.Appx. 754, 755 (9th Cir. 2002) ("An inmate legal assistant does not have a clearly established right to assert the claim of another inmate. . . .").

To state a viable denial of access claim, a prisoner/plaintiff must plausibly allege that some official misconduct caused "actual injury" – that is, that it frustrated or is impeding plaintiff's attempt to bring a nonfrivolous legal claim. Lewis, 518 U.S. at 348-49; Nevada Department of Corrections v. Greene, 648 F.3d 1014, 1018 (9th Cir. 2011) (citing id. at 349), cert. denied, 566 U.S. 911 (2012). The plaintiff must describe his underlying claim, whether anticipated or lost, and show that it is "nonfrivolous" and "arguable." See Christopher v. Harbury, 536 U.S. 403, 415 (2002).

III. DISCUSSION

Here, the Complaint is deficient in at least the following respects:

First, the Complaint violates Rule 10(a) because it does not name all of the defendants in the pleading's caption and instead, only generically refers in the caption to "Six San Bernardino County Deputy Sheriff Does." See, e.g., Ferdik v. Bonzelet, 963 F.2d 1258, 1263 (9th Cir.) (affirming dismissal of action based on failure to comply with court order that complaint be amended to name all defendants in caption as required by Rule 10(a)), cert. denied, 506 U.S. 915 (1992).

Second, the Complaint violates Rule 10(b) because all of the paragraphs therein are not sequentially numbered. Although the Complaint initially contains paragraphs numbered 1-44, the sequential numbering of the paragraphs ceases at that point even though the Complaint continues on for several more pages and paragraphs thereafter.

Third, multiple paragraphs in the Complaint allege that defendants and/or other individuals acted collectively to injure plaintiff. (See Complaint ¶¶ 23, 24, 43; Complaint at 12, 15). Such general and conclusory allegations against an indistinguishable group of defendants do not demonstrate a causal link between any individual defendant's conduct and an alleged constitutional violation, and therefore are insufficient to state a viable Section 1983 claim against any of the defendants. See Baker v. McCollan, 443 U.S. 137, 142 (1979) ("[A] public official is liable

under [Section] 1983 only 'if he causes the plaintiff to be subjected to a deprivation of his constitutional rights.'") (citation omitted; emphasis in original); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) ("In order for a person acting under color of state law to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation[.]"). To state a viable Section 1983 individual capacity claim plaintiff must, at a minimum, allege facts which demonstrate the specific acts each individual defendant did and how that individual's alleged misconduct specifically violated plaintiff's constitutional rights.

Fourth, to the extent plaintiff attempts to assert a First Amendment claim predicated on prison officials attempting to deter him from assisting a fellow inmate in such inmate's pursuit of a grievance or lawsuit, he fails to state a claim upon which relief may be granted. As noted above, petitioner has no protected First Amendment right in assisting a fellow inmate to exercise such fellow inmate's right to redress grievances. See supra note 1.

IV. ORDERS

In light of the foregoing, IT IS HEREBY ORDERED:

1. The Complaint is dismissed with leave to amend. If plaintiff intends to pursue this matter, he shall file a First Amended Complaint within twenty (20) days of the date of this Order which cures the pleading defects set forth herein.[2]

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[2]Any First Amended Complaint must: (a) be labeled "First Amended Complaint"; (b) be complete in and of itself and not refer in any manner to the original Complaint – *i.e.*, it must include all claims on which plaintiff seeks to proceed (Local Rule 15-2); (c) contain a "short and plain" statement of the claim(s) for relief (Fed. R. Civ. P. 8(a)); (d) make each allegation "simple, concise and direct" (Fed. R. Civ. P. 8(d)(1)); (e) present allegations in sequentially numbered paragraphs, "each limited as far as practicable to a single set of circumstances" (Fed. R. Civ. P. 10(b)); (f) state each claim founded on a separate transaction or occurrence in a separate count as needed for clarity (Fed. R. Civ. P. 10(b)); (g) set forth clearly the sequence of events giving rise to the claim(s) for relief; (h) allege specifically what each defendant did and how that defendant's conduct specifically violated plaintiff's civil rights; and (i) not change the

(continued...)

The Clerk is directed to provide plaintiff with a Central District of California Civil Rights Complaint Form, CV-66, to facilitate plaintiff's filing of a First Amended Complaint if he elects to proceed in that fashion.

2. In the event plaintiff elects not to proceed with this action, he shall sign and return the attached Notice of Dismissal by the foregoing deadline which will result in the voluntary dismissal of this action without prejudice.

3. Plaintiff is cautioned that, absent further order of the Court, plaintiff's failure timely to file a First Amended Complaint or Notice of Dismissal, may be deemed plaintiff's admission that amendment is futile, and may result in the dismissal of this action with or without prejudice on the grounds set forth above, on the ground that amendment is futile, for failure diligently to prosecute and/or for failure to comply with the Court's Order.

IT IS SO ORDERED.

DATED: July 25, 2017

HONORABLE MANUEL L. REAL
UNITED STATES DISTRICT JUDGE

Attachments

[2](...continued)
nature of this suit by adding new, unrelated claims or defendants, cf. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (civil rights plaintiff may not file "buckshot" complaints – *i.e.*, a pleading that alleges unrelated violations against different defendants).