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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RAFAEL BENITEZ,
Plaintiff,
v.
SANDRA HUTCHENS, et al.,
Defendants.

Case No. SACV 12-550 AG(JC)

ORDER ACCEPTING FINDINGS,
CONCLUSIONS, AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the operative Third Amended Complaint, defendant’s Motion to Dismiss the Third Amended Complaint (“Motion to Dismiss”), all documents filed by the parties in connection with the Motion to Dismiss, and all of the records herein, including the attached Report and Recommendation of United States Magistrate Judge (“Report and Recommendation” or “R&R”), plaintiff’s objections to the Report and Recommendation (“Objections”), defendant’s Reply to the Objections, plaintiff’s unauthorized Response to such Reply (“First Response”), defendants Objections to and Motion to Strike the First Response (“Motion to Strike”), and plaintiff’s Response to the Motion to Strike (“Second Response”). The Court has further made a *de novo* determination of those portions of the Report and

1 Recommendation to which objection is made. This Court declines to consider new
2 arguments raised for the first time in the Objections, First Response, and/or Second
3 Response. See United States v. Howell, 231 F.3d 615, 621 (9th Cir. 2000), cert.
4 denied, 534 U.S. 831 (2001). The Court denies the Motion to Strike as moot
5 because consideration of the matters raised in the First Response does not alter the
6 outcome of this matter. The Court concurs with and accepts the findings,
7 conclusions, and recommendations of the United States Magistrate Judge and
8 overrules the Objections for reasons including those discussed below.

9 The Objections are premised primarily on misinterpretation of the pleading
10 requirements under Rule 8 of the Federal Rules of Civil Procedure (“Rule 8”). For
11 example, plaintiff argues, in part, that at the “pre-discovery stage” he was entitled
12 to use “more conclusory and formulaic” allegations in the Third Amended
13 Complaint purportedly since the information needed to present plaintiff’s claims
14 with more factual specificity was in the exclusive possession of the defendant.
15 (Objections at 3) (citing, in part, Phillips v. County of Fresno, 2013 WL 6243278,
16 *10 (E.D. Cal. Dec. 3, 2013) (conclusory allegations linking “unspecified [jail]
17 policies and practices” with constitutional violations against Section 1983 plaintiffs
18 “may be sufficient” to survive motion to dismiss “where the facts that might
19 demonstrate the causal connection . . . are not available to the pleading party prior
20 to discovery”) (citing Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1439 (9
21 Cir. 1987), overruled in part on other grounds as noted in Howard v. Everex
22 Systems, Inc., 228 F.3d 1057, 1065 n.10 (9th Cir. 2000)); Estate of Duran v.
23 Chavez (“Duran”), 2015 WL 8011685, *9 (E.D. Cal. Dec. 7, 2015) (finding
24 allegations of “supervisory liability” sufficient to survive motion to dismiss “where
25 it may be presumed that Defendants are in sole possession of facts needed to
26 support or refute [Section 1983] claims”) (citing Phillips)). As the Report and
27 Recommendation explains, however, to survive a motion to dismiss, a complaint
28 must contain more than “conclusions” or “a formulaic recitation of the elements of

1 a cause of action.” Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009); see also id. at
2 686 (“[T]he Federal Rules do not require courts to credit a complaint’s conclusory
3 statements without reference to its factual context.”). The Rule 8 pleading
4 standards are not relaxed based on speculation that a plaintiff will be able to
5 provide more specificity after he obtains more information through discovery. To
6 the contrary, a plaintiff “is not entitled to discovery” where, like here, the
7 “complaint is deficient under Rule 8. . . .” Iqbal, 556 U.S. at 678-79, 686 (“Rule 8
8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more
9 than conclusions.”); see also Bell Atlantic Corp. v. Twombly (“Twombly”), 550
10 U.S. 544, 560 (2007) (rejecting the notion that “a wholly conclusory statement of
11 claim would survive a motion to dismiss whenever the pleadings left open the
12 possibility that a plaintiff might later establish some ‘set of [undisclosed] facts’ to
13 support recovery”). The unpublished district court cases plaintiff cites – Phillips
14 and Duran – are inapposite. Both rely on a Ninth Circuit case – Wool – that
15 (a) was decided more than 20 years before Twombly and Iqbal; and (b) held, in
16 pertinent part, that the *heightened* pleading requirement for fraud claims provided
17 by Fed. R. Civ. P. 9(b) “[could] be relaxed as to matters peculiarly within the
18 opposing party’s knowledge . . . as in cases of corporate fraud” Wool, 818
19 F.2d at 1439 (citations and quotation marks omitted).

20 In addition, plaintiff suggests that conclusory allegations in the Third
21 Amended Complaint may not be dismissed as failing to state a claim “unless it
22 appears beyond doubt that [plaintiff] can prove no set of plausible [] facts in
23 support of the claim that would entitled the plaintiff to relief[.]” (Objections at 5)
24 (citing Hydrick v. Hunter (“Hydrick I”), 500 F.3d 978, 985 (9th Cir. 2007),
25 vacated, 556 U.S. 1256 (2009)). The case plaintiff cites in support of this
26 proposition, however, was vacated and remanded “for further consideration in light
27 of [Iqbal]. . . .” Hunter v. Hydrick, 556 U.S. 1256 (2009). Moreover, the U.S.
28 Supreme Court has rejected the very similar argument that “a wholly conclusory

1 statement of claim would survive a motion to dismiss whenever the pleadings left
2 open the possibility that a plaintiff might later establish some ‘set of [undisclosed]
3 facts’ to support recovery.” Twombly, 550 U.S. at 561 (abrogating
4 Conley v. Gibson, 78 S. Ct. 99 (1957), and rejecting common misreading of
5 Conley “no set of facts” language).

6 The Court rejects plaintiff’s argument that his well-pleaded claims in the
7 Third Amended Complaint were erroneously rejected based on “highly speculative
8 ‘conflicts.’” (Objections at 9-24). Evaluating whether a complaint states a
9 plausible claim for relief is “a context-specific task that requires the reviewing
10 court to draw on its judicial experience and common sense.” Iqbal, 556 U.S. at
11 679 (citation omitted). Here, the Report and Recommendation reasonably
12 concluded that plaintiff’s allegations stated claims that were at most merely
13 consistent with the defendant’s liability, and at times supported at least one
14 alternative explanation for the defendant’s actions that might not result in liability
15 at all. Thus, even assuming the veracity of plaintiff’s well-pleaded allegations,
16 here plaintiff needed to allege more specific facts in order to state a plausible claim
17 for relief. See, e.g., In re Century Aluminum Company Securities Litigation, 729
18 F.3d 1104, 1108 (9th Cir. 2013) (“When faced with two possible explanations,
19 only one of which can be true and only one of which results in liability, plaintiffs
20 cannot offer allegations that are ‘merely consistent with’ their favored explanation
21 but are also consistent with the alternative explanation. [Citation]. Something
22 more is needed, such as facts tending to exclude the possibility that the alternative
23 explanation is true [citation] in order to render plaintiffs’ allegations plausible
24 within the meaning of Iqbal and Twombly.”) (internal citations omitted) (emphasis
25 added). Consistent with the foregoing authority, and contrary to plaintiff’s
26 assertions otherwise, the Report and Recommendation did not require plaintiff to
27 provide “incontrovertible proof” in order to allege his claims with sufficient
28 specificity.

1 Plaintiff's other objections are essentially based on the same arguments
2 previously raised, and which the Report and Recommendation properly concludes
3 have no merit.

4 IT IS HEREBY ORDERED that (1) The Motion to Dismiss is granted;
5 (2) the Third Amended Complaint is dismissed without leave to amend; and
6 (3) Judgment be entered dismissing the case with prejudice as against all
7 defendants.

8 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the
9 Report and Recommendation, and the Judgment herein on plaintiff and on counsel
10 for defendants.

11 IT IS SO ORDERED.

12 DATED: December 26, 2016



15 HONORABLE ANDREW J. GUILFORD
16 UNITED STATES DISTRICT JUDGE