UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

IVIN MOOD, Plaintiff, v. COUNTY OF ORANGE, ET AL., Defendants.	Case No. SACV 17-762-SVW (KK) ORDER DISMISSING FIRST AMENDED COMPLAINT WITH LEAVE TO AMEND

I.

INTRODUCTION

Plaintiff Ivin Mood ("Plaintiff"), proceeding pro se and in forma pauperis, filed a First Amended Complaint ("FAC") pursuant to 42 U.S.C. § 1983 ("Section 1983"). It appears Plaintiff is suing defendants County of Orange and City of Newport Beach ("Defendants") for violations of Section 1983 arising out of an incident at Orange County Jail. As discussed below, the Court dismisses the FAC with leave to amend.

II.

PROCEDURAL HISTORY

On April 28, 2017, Plaintiff filed a Complaint appearing to sue defendants County of Orange and Orange County Jail Deputy D. Lopes in his official capacity

for violations of Section 1983 and state law arising out of an incident on April 30, 2016 at Santa Ana Central Jail. ECF Docket No. ("Dkt.") 1, Compl.

On May 18, 2017, the Court dismissed the Complaint for failure to state a claim and granted Plaintiff leave to amend. Dkt. 7.

On June 5, 2017, Plaintiff filed the instant FAC suing Defendants.[1] Dkt. 8. Plaintiff alleges he was arrested without probable cause pursuant to a City of Newport Beach policy of arresting homeless persons without probable cause. Id. at 3-7. Plaintiff also alleges he suffered abuse when County of Orange sheriffs slammed his face into a jail cell window during intake at Orange County Jail pursuant to a County of Orange policy of excessive force. Id. at 2, 4-7.

III.

STANDARD OF REVIEW

As Plaintiff is proceeding in forma pauperis, the Court must screen the Complaint and is required to dismiss the case at any time if 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. 28 U.S.C. § 1915(e)(2)(B); see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

In determining whether a complaint fails to state a claim for screening purposes, the Court applies the same pleading standard from Rule 8 of the Federal Rules of Civil Procedure ("Rule 8") as it would when evaluating a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), 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).

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[1] Plaintiff titled the FAC a Motion for Leave to File a First Amended Complaint. See Dkt. 8. Hence, on June 19, 2017, the Court granted Plaintiff's Motion for Leave to file the FAC, but advised Plaintiff that the Court would screen the FAC pursuant to 28 U.S.C. § 1915(e)(2). See Dkt. 10.

A complaint may be dismissed for failure to state a claim "where there is no cognizable legal theory or an absence of sufficient facts alleged to support a cognizable legal theory." Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007) (citation omitted). In considering whether a complaint states a claim, a court must accept as true all of the material factual allegations in it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). However, the court need not accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) (citation omitted). Although a complaint need not include detailed factual allegations, it "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Cook, 637 F.3d at 1004 (citation omitted).

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

If the court finds the complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted if it appears possible the defects in the complaint could be corrected, especially if the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint

cannot be cured by amendment, the court may dismiss without leave to amend. Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th Cir. 2009).

IV.

DISCUSSION

A. PLAINTIFF FAILS TO STATE A CLAIM AGAINST DEFENDANT COUNTY OF ORANGE

(1) APPLICABLE LAW

Because no respondeat superior liability exists under Section 1983, a state actor is liable only for injuries that arise from an official policy or longstanding custom. Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 694, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978); see also City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct. 1197, 103 L. Ed. 2d 412 (1989) ("A municipality can be liable under § 1983 only where its policies are the 'moving force [behind] the constitutional violation.' ") (citing Polk Cty. v. Dodson, 454 U.S. 312, 326, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981)). A plaintiff must allege facts to establish "that a [county] employee committed the alleged constitutional violation pursuant to a formal governmental policy or a longstanding practice or custom which constitutes the standard operating procedure of the local governmental entity." Gillette v. Delmore, 979 F.2d 1342, 1346 (9th Cir. 1992) (citations and internal quotation marks omitted); see also Ziegler v. Indian River Cty., 64 F.3d 470, 474 (9th Cir. 1995) (noting "county not liable for acts of county officials unless the officials' conduct was the consequence of county policy or custom").

Proof of random acts or isolated events is insufficient to establish a custom or practice. Thompson v. City of Los Angeles, 885 F.2d 1439, 1444 (9th Cir. 1989). Rather, a plaintiff must prove widespread, systematic constitutional violations which have become the force of law. Board of Cty. Comm'rs of Bryan Cty., Okl. v. Brown, 520 U.S. 397, 404, 117 S. Ct. 1382, 1388, 137 L. Ed. 2d 626 (1997). In

addition, a plaintiff must allege the policy was "(1) the cause in fact and (2) the proximate cause of the constitutional deprivation." Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996) (citing Arnold v. Int'l Bus. Machines Corp., 637 F.2d 1350, 1355 (9th Cir. 1981)).

Factual allegations sufficient to put a defendant on adequate notice of a Monell claim "could include, but are not limited to, past incidents of misconduct to others, multiple harms that occurred to the plaintiff himself, misconduct that occurred in the open, the involvement of multiple officials in the misconduct, or the specific topic of the challenged policy or training inadequacy." Guevara v. Cty. of Los Angeles, No. CV 14-08120-DDP, 2015 WL 224727, at *4 (C.D. Cal. Jan. 15, 2015) (quoting Thomas v. City of Galveston, Texas, 800 F. Supp. 2d 826, 844 (S.D. Tex. 2011)). These details are necessary, even at the pleading stage, to "help to satisfy the requirement of providing not only fair notice of the nature of the claim, but also grounds on which the claim rests," id., and to "permit the court to infer more than the mere possibility of misconduct." Iqbal, 556 U.S. at 679.

(2) ANALYSIS

Assuming Plaintiff adequately pled a constitutional violation when Orange County sheriffs used allegedly excessive force against him, he has failed to state a claim against defendant County of Orange, because Plaintiff does not adequately allege the violation occurred pursuant to a County of Orange longstanding custom or policy. Plaintiff conclusorily alleges "anyone who has spent any amount of time in this Orange County Jail intake area, knows, the inmates are regularly slammed face first into the wall without any justifiable cause." FAC at 5. However, Plaintiff's single, isolated event is insufficient to establish a custom or practice. Thompson, 885 F.2d at 1444. Hence, because the FAC contains insufficient facts to plausibly state a valid Monell claim, Plaintiff has again failed to state a claim against defendant County of Orange. Young v. City of Visalia, 687 F. Supp. 2d 1141, 1150; see also Iqbal, 556 U.S. at 679.

B. PLAINTIFF'S CLAIM AGAINST DEFENDANT CITY OF NEWPORT BEACH IS SUBJECT TO DISMISSAL AS DUPLICATIVE OF PENDING LITIGATION

(1) APPLICABLE LAW

"Plaintiffs generally have no right to maintain two separate actions involving the same subject matter at the same time in the same court and against the same defendant." Adams v. California Dep't of Health Servs., 487 F.3d 684, 688 (9th Cir. 2007) overruled in part on other grounds by Taylor v. Sturgell, 553 U.S. 880, 128 S. Ct. 2161, 171 L. Ed. 2d 155 (2008) (citations omitted) (affirming dismissal of duplicative action); M.M. v. Lafayette Sch. Dist., 681 F.3d 1082, 1091 (9th Cir. 2012) (affirming dismissal of duplicative claim, noting "[i]t is well established that a district court has broad discretion to control its own docket, and that includes the power to dismiss duplicative claims").

(2) ANALYSIS

Here, Plaintiff has a case currently pending before this Court alleging defendant City of Newport Beach has a policy of arresting homeless persons without probable cause and that Plaintiff has been arrested without probable cause by City of Newport Beach police officers on multiple occasions. See Case No. SACV 15-1154-SVW (KK), Dkt. 11, Second Amended Complaint.[2] Plaintiff's claim against defendant City of Newport Beach in the instant FAC is identical. See FAC. Therefore, Plaintiff's claim against City of Newport Beach based on an alleged policy of arresting homeless persons without probable cause is subject to dismissal.

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[2] The Court takes judicial notice of Plaintiff's prior proceedings in this Court and in the state courts. See In re Korean Air Lines Co., 642 F.3d 685, 689 n.1 (9th Cir. 2011).

C. PLAINTIFF'S CLAIMS DO NOT ARISE OUT OF THE SAME TRANSACTION OR OCCURRENCE AND THUS, MAY NOT BE RAISED IN A SINGLE COMPLAINT

(1) APPLICABLE LAW

A basic lawsuit is a single claim against a single defendant. Federal Rule of Civil Procedure 18(a) allows plaintiffs to add multiple claims to the lawsuit when they are against the same defendant. Fed. R. Civ. P. 18(a). Federal Rule of Civil Procedure 20(a)(2) allows plaintiffs to join multiple defendants to a lawsuit where the right to relief arises out of the same "transaction, occurrence, or series of transactions" and "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). In contrast, unrelated claims against different defendants must be brought in separate lawsuits to avoid confusion and prevent "the sort of morass [a multiple claim, multiple defendant] suit produce[s]." Thomas v. Rest., No. 115-CV-01113-DAD-SKO, 2016 WL 500702, at *3 (E.D. Cal. Feb. 9, 2016) (quoting George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)). If the test for permissive joinder is not satisfied, the court "may at any time, on just terms, add or drop a party" and "may also sever any claim against a party." Fed. R. Civ. P. 21; see also Coughlin v. Rogers, 130 F.3d 1348, 1351 (9th Cir. 1997) (noting if joined plaintiffs fail to meet requirements of Rule 20(a), "the district court may sever the misjoined plaintiffs, as long as no substantial right will be prejudiced by the severance").

(2) ANALYSIS

Here, the FAC alleges defendant County of Orange has a policy of using excessive force during intake and defendant City of Newport Beach has a policy of arresting homeless persons without probable cause. See FAC. Plaintiff's claims against defendant County of Orange arise out of an incident of excessive force during intake, whereas his claim against defendant City of Newport Beach arises out of his arrest before he arrived at the Orange County Jail. Id. Accordingly,

Plaintiff's claims do not arise out of the same "transaction, occurrence, or series of transaction." Fed. R. Civ. P. 20(a)(2). In addition, the incidents do not appear to involve common questions of law or fact, in that the facts necessary to prove the claims are unique. As such, even if Plaintiff has stated valid civil rights claims against both Defendants, he will not be permitted to proceed with both claims combined into one complaint. Hence, the FAC is subject to dismissal for failure to comply with the Federal Rules of Civil Procedure.

V.

LEAVE TO FILE A SECOND AMENDED COMPLAINT

For the foregoing reasons, the FAC is subject to dismissal. As the Court is unable to determine whether amendment would be futile, leave to amend is granted. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).

Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of the service date of this Order, Plaintiff choose one of the following two options:

1. Plaintiff may file a Second Amended Complaint to attempt to cure the deficiencies discussed above. **The Clerk of Court is directed to mail Plaintiff a blank Central District civil rights complaint form to use for filing the Second Amended Complaint, which the Court encourages Plaintiff to use.**

If Plaintiff chooses to file a Second Amended Complaint, Plaintiff must clearly designate on the face of the document that it is the "Second Amended Complaint," it must bear the docket number assigned to this case, and it must be retyped or rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not include new defendants or new allegations that are not reasonably related to the claims asserted in the FAC. In addition, the Second Amended Complaint must be complete without reference to the Complaint, FAC, or any other pleading, attachment, or document.

An amended complaint supersedes the preceding complaint. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will treat all preceding complaints as nonexistent. Id. Because the Court grants Plaintiff leave to amend as to all his claims raised here, any claim raised in a preceding complaint is waived if it is not raised again in the Second Amended Complaint. Lacey v. Maricopa Cnty., 693 F.3d 896, 928 (9th Cir. 2012).

The Court advises Plaintiff that it generally will not be well-disposed toward another dismissal with leave to amend if Plaintiff files a Second Amended Complaint that continues to include claims on which relief cannot be granted. "[A] district court's discretion over amendments is especially broad 'where the court has already given a plaintiff one or more opportunities to amend his complaint.'" Ismail v. County of Orange, 917 F. Supp.2d 1060, 1066 (C.D. Cal. 2012) (citations omitted); see also Ferdik, 963 F.2d at 1261. Thus, **if Plaintiff files a Second Amended Complaint with claims on which relief cannot be granted, the Second Amended Complaint will be dismissed without leave to amend and with prejudice.**

Plaintiff is explicitly cautioned that failure to timely file a Second Amended Complaint will result in this action being dismissed with prejudice for failure to state a claim, prosecute and/or obey Court orders pursuant to Federal Rule of Civil Procedure 41(b).

2. Alternatively, Plaintiff may voluntarily dismiss the action without prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **The Clerk of Court is directed to mail Plaintiff a blank Notice of Dismissal Form, which the Court encourages Plaintiff to use.**

Dated: July 27, 2017

HONORABLE KENLY KIYA KATO
United States Magistrate Judge