

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH TOMADA,)	
)	
Plaintiff,)	2:10-CV-00856-GEB-DAD
)	
v.)	<u>ORDER GRANTING DEFENDANT'S</u>
)	<u>MOTION TO DISMISS</u> *
SANDRA SPAGNOLI, and DOES 1-20,)	
inclusive,)	
)	
Defendants.)	
_____)	

Defendant Sandra Spagnoli ("defendant") moves for dismissal of plaintiff's Complaint with prejudice, under Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"). Defendant argues the two claims comprising plaintiff's Complaint should be dismissed since plaintiff has failed to sufficiently allege that he was deprived of a constitutional right. (Mot. to Dismiss 1:26-2:6). For the reasons stated below, defendant's dismissal motion is granted without prejudice.

I. LEGAL STANDARD

A dismissal motion under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. Novarro v. Black, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain "a short

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 and plain statement of the claim showing that the pleader is entitled
2 to relief” Fed. R. Civ. P. 8(a)(2). The complaint must “give
3 the defendant fair notice of what the [plaintiff’s] claim is and the
4 grounds upon which relief rests” Bell Atlantic Corp. v.
5 Twombly, 550 U.S. 544, 555 (2007).

6 Dismissal of a claim under Rule 12(b)(6) is appropriate only
7 where the complaint either 1) lacks a cognizable legal theory, or 2)
8 lacks factual allegations sufficient to support a cognizable legal
9 theory. Balistreri v. Pacific Police Dept., 901 F.2d 696, 699 (9th
10 Cir. 1988). To avoid dismissal, a plaintiff must allege “only enough
11 facts to state a claim to relief that is plausible on its face.”
12 Twombly, 550 U.S. at 547.

13 In deciding a Rule 12(b)(6) motion, the material allegations
14 of the complaint are accepted as true and all reasonable inferences
15 are drawn in favor of the plaintiff. See al-Kidd v. Ashcroft, 580
16 F.3d 949, 956 (9th Cir. 2009). The Court must also assume that
17 general allegations embrace the necessary, specific facts to support
18 the claim. Smith v. Pacific Prop. And Dev. Corp. 358 F.3d 1097, 1106
19 (9th Cir. 2004). However, neither conclusory statements nor legal
20 conclusions are entitled to a presumption of truth. See Ashcroft v.
21 Iqbal, 129 S. Ct. 1937, 1949-50 (2009); Twombly, 550 U.S. at 555.
22 Additionally, courts will not assume that the plaintiff “can prove
23 facts that it has not alleged, or that the defendants have violated...
24 laws in ways that have not been alleged.” Assoc. General Contractors
25 of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526
26 (1983).

27 If a Rule 12(b)(6) is granted, the “district court should
28 grant leave to amend even if no request to amend the pleadings is

1 made, unless it determines that the pleading could not possibly be
2 cured by the allegation of other facts." Lopez v. Smith, 203 F.3d
3 1122, 1127 (9th Cir. 2000) (quoting Doe v. U.S., 58 F.3d 484, 497 (9th
4 Cir. 1995)).

5 **II. FACTUAL ALLEGATIONS**

6 Plaintiff alleges two doe defendant City of Benicia police
7 officers violated his federal Fourth Amendment right when they failed
8 to protect him from being attacked by an intoxicated person.
9 Plaintiff alleges in his Complaint that he was at a nightclub with
10 family and friends in Benecia, California, and "was accosted" by a
11 number of intoxicated patrons as he was leaving the nightclub. (Compl.
12 ¶ 6.)

13 Plaintiff alleges that he "sought, and received, assistance
14 from" City of Benicia police officers. (Id., ¶ 7.) Plaintiff alleges
15 after the officers intervened, they "became aware that one of the
16 drunk patrons was illegally carrying a concealed knife; and that he
17 had threatened plaintiff with that knife." (Id.) Plaintiff further
18 alleges "[d]espite the . . . clear indication that plaintiff was in
19 distress . . . , [the] officers instructed plaintiff to simply walk
20 away" in deliberate indifference "that plaintiff would be assaulted
21 and battered by the knife-wielding drunk patrons." (Id., ¶¶ 7-8.)
22 Plaintiff also alleges that "[o]nly moments after the doe defendant
23 officers left the scene, the drunk patrons pursued plaintiff and
24 attacked him with a knife." (Id., ¶ 9.)

25 **III. DISCUSSION**

26 Plaintiff's first claim is against unidentified police
27 officers under 42 U.S.C. § 1983 ("§ 1983"). (Compl. ¶¶ 10-15.)
28 Plaintiff's second claim is alleged against defendant Spagnoli and doe

1 defendants for "deficient policies, practices and procedures regarding
2 the training of officers." (Id., ¶¶ 16-20.) The second claim
3 incorporates the allegations in the first claim and is based upon
4 plaintiff's allegations that doe City of Benicia police officers
5 deprived him of liberty under the Fourth Amendment, when they failed
6 to protect him from being battered by a drunk patron. Notwithstanding
7 plaintiff's allegation that his first claim is made under the Fourth
8 Amendment, the wording of the allegations in this claim, i.e.
9 "defendant officers caused plaintiff to be subjected to a deprivation
10 of liberty and/or property interest," and plaintiff's arguments raised
11 in opposition to the dismissal motion, show this claim is plaintiff's
12 attempt to allege a Fourteenth Amendment substantive due process
13 failure to protect claim. (Compl. ¶ 12, and Pl. Opp'n p. 2, lines 12-
14 13.)

15 To state a claim under Section 1983 against either an
16 individual defendant or a municipality, a plaintiff must establish
17 that he was deprived of a right secured by the Constitution or laws of
18 the United States. American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S.
19 40, 49-50 (1999); Oviatt by and through Waugh v. Pearce, 954 F.2d
20 1470, 1474 (9th Cir. 1992). The Fourteenth Amendment "Due Process
21 Clauses generally confer no affirmative right to governmental aid,
22 even where such aid may be necessary to secure life, liberty, or
23 property interests of which the government itself may not deprive the
24 individual." DeShaney v. Winnebago County Dept. Of Social Services,
25 489 U.S. 189, 196 (1989). There are two exceptions to this general
26 rule: 1) the "special relationship" exception and 2) the "danger
27 creation" exception. Estate of Amos v. City of Page, Arizona, 257 F.3d
28 1086, 1090-91 (9th Cir. 2001).

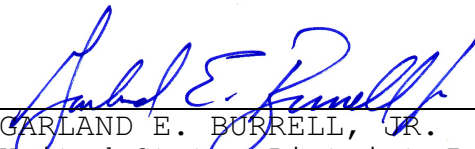
1 The "special relationship" exception arises when the
2 government enters into a "custodial" relationship with a party, such
3 as taking the party into custody or placing him or her into
4 involuntary hospitalization. Huffman v. County of Los Angeles, 147
5 F.3d 1054, 1058-59 (9th Cir. 1998).

6 The "danger creation" exception exists when "the
7 [government] affirmatively places the plaintiff in a dangerous
8 situation." Estate of Amos, 257 F.3d at 1091. When considering
9 the "danger creation" exception in context of law enforcement
10 inaction, the focus is "whether the officers left [plaintiff] in
11 a situation that was more dangerous than the one in which they
12 found him." Id.; See also Johnson v. City of Seattle, 474 F.3d
13 634, 639 (9th Cir. 2007) (summarizing Ninth Circuit cases which
14 apply the "danger creation" exception); Escamilla v. City of
15 Santa Ana, 796 F.2d 266 (9th Cir. 1986) (stating "absence of some
16 special relationship to the victim, government officials
17 generally are not liable under section 1983 for their failure to
18 protect citizens from dangerous situations which [the] officials
19 neither created nor exacerbated.").

20 Here, Plaintiff fails to allege facts sufficient to
21 show that either the "special relationship" or the "danger
22 creation" exception applies to his claims. Nor do Plaintiff's
23 allegations contain facts explaining why defendant Spagnoli is
24 exposed to liability for his claims. Therefore, defendant's
25 dismissal motion is granted, and because of this ruling, it is
26 unnecessary to address defendant's alternative qualified immunity
27 argument. However, Plaintiff is granted fourteen (14) days leave
28

1 from the date on which this order is filed to amend the dismissed
2 claims in his Complaint.

3 Dated: June 2, 2010

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5 
6 GARLAND E. BURRELL, JR.
United States District Judge