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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARVIN SHADD, et al.,  
Plaintiffs,  
v.  
COUNTY OF SACRAMENTO, et al.,  
Defendants.

No. 2:12-cv-002834 MCE KJN

**ORDER**

On April 15, 2013, the County of Sacramento (“Sacramento”), Verne L. Speirs (“Speirs”), and Don Meyer (“Meyer”) (collectively referred to as “Defendants”) brought a Rule 12 (b)(6)<sup>1</sup> Motion to Dismiss the First Amended Complaint (“FAC”) Marvin Shadd (“Shadd”), Psyche Hayes (“Hayes”), Gage Quinones (“Quinones”), Vernon Tidwell (“Tidwell”), Orlindo Myles (“Myles”), Carl. C. Randolph (“Randolph”), Joseph Anthony Nunez (“Nunez”) and Oscar Constancio (“Constancio”) (collectively referred to as “Plaintiffs”) brought against them. (ECF Nos. 6 and 14.)<sup>2</sup>

<sup>1</sup> All references to Rule or Rules refer to the Federal Rules of Civil Procedure.

<sup>2</sup> The other Defendants, including Tracy Bennet, Director of Sacramento County Department of Health and Human Services; Probation Staff Wilbon; Probation Officer Peralta; Probation Staff Greenhall, Probation Staff Lopez; Probation Staff Heinz; Probation Staff Arroyo; Probation Staff Carlos Smith, Probation Officer Earp; Probation Staff Tiara; Probation Staff Sanchez; Probation Staff Ballas; Probation Staff Cervantes; and Probation Staff Balls. None of these Defendants joined the Motion to Dismiss (ECF N. 14-1), but Probation Staff Wilbon, Probation Staff Carlos Smith, Probation Officer Ronald Earp, James Terrel, and Probation Staff Jose Cervantes filed Answers. (ECF Nos. 35-37.) While the arguments made

1 Plaintiffs FAC includes four actions: (1) unnecessary, disproportionate, and excessive  
2 force in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution;  
3 (2) cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments  
4 to the U.S. Constitution; (3) Due Process violations of the Fifth and Fourteenth  
5 Amendments; and (4) Violations of the First Amendment to the U.S. Constitution. (ECF  
6 No. 6.) For the reasons described below, the Court GRANTS Defendants' Motion to  
7 Dismiss. (ECF No. 14.)<sup>3</sup>

## 8

### 9 **BACKGROUND<sup>4</sup>**

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11 Youth residents in the Sacramento County Juvenile Hall are subjected to an  
12 entrenched culture of violence arising from resident-resident and staff-resident violence  
13 that results in a pattern of unnecessary, disproportionate, and excessive force by  
14 probation officers that goes well beyond the good-faith effort to maintain or restore  
15 discipline. The pervasiveness<sup>3</sup> of staff-resident violence is the result of the frequent use  
16 of violent practices widely known by residents as “dipping” and “slamming,” where  
17 Defendants slam, tackle, push, throw, trip, or drag Plaintiffs into solid surfaces or spray  
18 chemical irritants into their faces. Defendants inflict excessive force for no reason at all  
19 or in response to Plaintiffs talking back to staff, failing to maintain proper position in line,  
20 standing up in a dorm room, looking up at staff, failing to get down quickly enough during  
21 unit alarms and talking during movies. After the use of excessive force, Plaintiffs are  
22 sent to holding cells where they are deprived of outer clothing and left in their underwear  
23 with inadequate medical attention.

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25 in Defendants' Motion apply equally to all Defendants, the Court may only sua sponte dismiss those  
26 Defendants who have not appeared and challenged the pleadings. See Abagninin v. AMVAC Chem.  
Corp., 545 F.3d 733, 742–43 (9th Cir.2008).

27 <sup>3</sup> Because oral argument will not be of material assistance, the Court orders this matter submitted  
on the briefs. E.D. Cal. Local Rule 78-230(h).

28 <sup>4</sup> The facts are taken, largely verbatim, from Plaintiffs' FAC. (ECF No. 6.)

1 After these general allegations, Plaintiffs are listed in the following order: Shadd,  
2 Hayes, Quinones, Tidwell, Myles, Randolph, Nunez and Constancio. Below each  
3 Plaintiff's name, the excessive force the Plaintiff allegedly experienced is described. The  
4 Complaint is extremely vague. There is not a single date in Plaintiffs' Background  
5 section. It is unclear when any of the acts of violence allegedly happened. It is unclear  
6 when any of the Plaintiffs resided in Sacramento County Juvenile Hall or whether  
7 any of the Plaintiffs still reside in Sacramento County Juvenile Hall. The only dates in  
8 the entire Complaint are the dates that Speirs' served as the Chief Probation Officer of  
9 Sacramento County and the date Meyer's tenure began.<sup>5</sup> Often, the alleged  
10 perpetrators of violence are unnamed and simply described as "probation staff."

## 11 12 STANDARD

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14 On a motion to dismiss for failure to state a claim under Federal Rule of Civil  
15 Procedure 12(b)(6), all allegations of material fact must be accepted as true and  
16 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.  
17 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and plain  
18 statement of the claim showing that the pleader is entitled to relief" in order to "give the  
19 defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell  
20 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,  
21 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require  
22 detailed factual allegations. However, "a plaintiff's obligation to provide the grounds of  
23 his entitlement to relief requires more than labels and conclusions, and a formulaic  
24 recitation of the elements of a cause of action will not do." Id. (internal citations and  
25 quotations omitted).

26  
27 <sup>5</sup> Speirs served as the Chief Probation Officer from 1993 to 2009; Meyer began his service in 2009  
28 and remains the Chief Probation Officer of Sacramento County. Thus, it is possible that Plaintiffs are  
alleging acts of violence dating as far back as 1993, but it is impossible to know from reading Plaintiffs'  
vague Complaint

1 A court is not required to accept as true a “legal conclusion couched as a factual  
2 allegation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009) (quoting Twombly, 550 U.S.  
3 at 555). “Factual allegations must be enough to raise a right to relief above the  
4 speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R.  
5 Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading  
6 must contain something more than “a statement of facts that merely creates a suspicion  
7 [of] a legally cognizable right of action.”)).

8 Furthermore, “Rule 8(a)(2). . . requires a showing, rather than a blanket assertion,  
9 of entitlement to relief.” Twombly, 550 U.S. at 556 n.3 (internal citations and quotations  
10 omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard to see how  
11 a claimant could satisfy the requirements of providing not only ‘fair notice’ of the nature  
12 of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing 5 Charles Alan  
13 Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain “only enough facts  
14 to state a claim to relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . . have  
15 not nudged their claims across the line from conceivable to plausible, their complaint  
16 must be dismissed.” Id. However, “[a] well-pleaded complaint may proceed even if it  
17 strikes a savvy judge that actual proof of those facts is improbable, and ‘that a recovery  
18 is very remote and unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236  
19 (1974)).

20 A court granting a motion to dismiss a complaint must then decide whether to  
21 grant leave to amend. Leave to amend should be “freely given” where there is no  
22 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice  
23 to the opposing party by virtue of allowance of the amendment, [or] futility of the  
24 amendment . . . .” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.  
25 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to  
26 be considered when deciding whether to grant leave to amend). Not all of these factors  
27 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .  
28 carries the greatest weight.”

1 Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th Cir. 1987). Dismissal  
2 without leave to amend is proper only if it is clear that “the complaint could not be saved  
3 by any amendment.” Intri-Plex Techs. v. Crest Group, Inc., 499 F.3d 1048, 1056  
4 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005); Ascon  
5 Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) (“Leave need not be  
6 granted where the amendment of the complaint . . . constitutes an exercise in  
7 futility . . . .”)).

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### ANALYSIS

11 It appears that Plaintiffs are alleging that the Defendants created or condoned a  
12 violent youth detention center and should be liable based on Monell v. Dep’t of Social  
13 Services of City of New York, 436 U.S. 658 (1978). However, it is unclear when this  
14 culture began or how Defendants are responsible for creating it. Plaintiffs failed to  
15 provide the time, place, or circumstances of any of the alleged assaults on Plaintiffs by  
16 probation staff. Further, the Compliant did not state the nature and extent of any of the  
17 Plaintiffs’ injuries. This Complaint “did not include sufficient allegations of underlying  
18 facts to give fair notice and to enable the opposing party to defend itself effectively.”  
19 Starr v. Baca 652 F.3d 1202, 1216 (9th Cir. 2011). It is possible that Plaintiffs have a  
20 cause of action, but at this point the Court would be creating one for Plaintiff, and there  
21 is no “duty (on the part) of the trial court . . . to create a claim which [plaintiff] has not  
22 spelled out in his pleading,” Doleman v. Meiji Mut. Life Ins. Co. 727 F.2d 1480, 1484  
23 (9th Cir. 1984) (quoting Clark v. National Travelers Life Ins. Co., 518 F.2d 1167, 1169  
24 (6th Cir. 1975).

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1 **CONCLUSION**

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3 For the reasons described above, the Court GRANTS Defendants' Motion to

4 Dismiss WITHOUT PREJUDICE. (ECF No. 14.) If no amended complaint is filed within

5 twenty-one (21) days of the date this order is electronically filed, the causes of action

6 against Sacramento, Speirs, Meyer, and the other Defendants who have not appeared in

7 this case and challenged the pleadings will be dismissed with prejudice. Because

8 Probation Staff Wilbon, Probation Staff Carlos Smith, Probation Officer Ronald Earp and


9 Probation Staff Jose Cervantes filed Answers, not Motions to Dismiss (ECF Nos. 35-37),

10 the causes of action against those Defendants will remain.

11 IT IS SO ORDERED.

12 Dated: August 21, 2013

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MORRISON C. ENGLAND, JR., CHIEF JUDGE  
16 UNITED STATES DISTRICT COURT

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