UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES D. HASS,

Plaintiff,

v.

SACRAMENTO COUNTY SHERIFF'S DEPARTMENT, ATTORNEY SEAN GJERDE, AND DOES 1 through X, inclusive,

Defendants.

No. 2:13-CV-01746 JAM KJN

ORDER GRANTING DEFENDANT SACRAMENTO COUNTY'S MOTION TO DISMISS

This matter is before the Court on Defendant Sacramento County's ("Defendant" or "Defendant County") Motion to Dismiss (Doc. #20) Plaintiff James Hass' ("Plaintiff") First Amended Complaint ("FAC") (Doc. #18) for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Plaintiff opposed the motion (Doc. #24) and Defendant replied (Doc. #26).[1] For the following reasons, Defendant's motion is GRANTED.

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

On December 8, 2010, Plaintiff was arraigned on charges of

[1] This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for March 19, 2014.

contempt of court for violation of a court order to pay child support. FAC ¶ 10. Plaintiff was ordered to appear in Sacramento County Superior Court on February 7, 2011 for trial on the contempt matter. FAC ¶ 11. On February 7, 2011, Plaintiff failed to appear in court. FAC ¶ 12. As a result of Plaintiff's non-appearance, the court ordered that Plaintiff be incarcerated in the Sacramento County Jail for 55 days. FAC, Ex. 2. On February 8, 2011, Plaintiff appeared in Sacramento County Superior Court, under the mistaken belief that trial was set for that date. FAC ¶¶ 16-17. Plaintiff was taken into custody, and remained in custody until March 5, 2011.
FAC ¶¶ 18, 21.

Plaintiff alleges that "Defendant County was not authorized by the Sacramento County Superior Court to arrest, detain or incarcerate Plaintiff." FAC ¶ 23. Plaintiff further alleges that "the Clerk's minutes of the proceedings on February 7, 2011 did not constitute a final order or judgment in the matter," and the Sacramento County Court did not execute and file a "Warrant of Commitment" until March 4, 2011. FAC ¶¶ 15, 24.

On his first day in custody, Plaintiff was interviewed by a "medical staff person" to determine his health needs while in Sacramento County Jail. FAC ¶ 41. Plaintiff alleges that he disclosed the following medical conditions: high blood pressure, acute sleep apnea, diabetes, and "diminished strength due to a major stroke." FAC ¶ 42. While incarcerated, Plaintiff claims he was originally provided with medication for his high blood pressure, but "at some point during his incarceration, Defendant County ceased providing" the medication. FAC ¶ 45. While in

custody, Plaintiff alleges he was not provided with any other medication, nor was he permitted to use a CPAP machine for his sleep apnea. FAC ¶¶ 46, 49. Plaintiff was allegedly "not allowed a single shower for 6 days," was held in a cell with "no windows and . . . bags of old food/garbage," and was not permitted "to exercise on a regular basis or to have time out of his cell." FAC ¶¶ 47-48, 51. While incarcerated, Plaintiff alleges he was not brought in front of a judicial magistrate to challenge the legality of his confinement. FAC ¶¶ 32, 38-39.

Plaintiff also alleges that Defendant "has a policy of segregating those incarcerated pursuant to a civil matter from those in criminal matters." FAC ¶ 64. Plaintiff further alleges that, "as a proximate result of this policy," he suffered constitutional injuries in violation of the Fourth and Eighth Amendments. FAC ¶ 68.

Plaintiff was represented by Sean Gjerde ("Defendant Gjerde") in the above-mentioned family court matter. FAC ¶ 71. Defendant Gjerde's representation of Plaintiff is the subject matter of Plaintiff's fourth through eighth causes of action. However, as Defendant County's Motion to Dismiss only addresses Plaintiff's first through third causes of action, the facts of Defendant Gjerde's representation are not relevant and are not summarized here.

On December 19, 2013, this Court granted Defendant County's Motion to Dismiss with leave to amend. (Doc. #16) On January 8, 2014, Plaintiff filed the FAC (Doc. #18) in this Court. Plaintiff's FAC includes the following causes of action against the Defendant County: (1) False Imprisonment; (2) Negligence; and

(3) "Violation of Civil Rights". This Court has original jurisdiction under 28 U.S.C. § 1331 because Plaintiff has asserted a claim for relief under 42 U.S.C. § 1983 for violation of his federal civil rights.

II. OPINION

A. First Cause of Action—False Imprisonment

Defendant argues that Plaintiff's first cause of action for false imprisonment is barred by California Penal Code ("CPC") section 847(b). Mot. at 4. Defendant notes that CPC section 847(b)(1) "precludes civil liability for false imprisonment against a peace officer for an act within the scope of his or her authority arising out of a lawful arrest, or an arrest that the officer had reasonable cause to believe was lawful." Mot. at 4. Plaintiff does not directly respond to this argument, but argues, generally, that's "Defendant's assertion of immunity is an affirmative defense" and that "motions to dismiss . . . do not typically and/or necessarily embrace litigation of affirmative defenses." Opp. at 1-2.

As an initial matter, immunity defenses are properly raised in a motion to dismiss. See, e.g., Mullis v. U.S. Bankr. Court for Dist. of Nevada, 828 F.2d 1385, 1387 n. 6 (9th Cir. 1987). Plaintiff cites no case law in support of his position that the issue of immunity has been raised prematurely. Opp. at 1-2. The Supreme Court has "stressed the importance of resolving immunity questions at the earliest possible stage of litigation." Hunter v. Bryant, 502 U.S. 224, 227 (1991). Accordingly, if the FAC does not "plausibly suggest an entitlement to relief," it would

be "unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

Under the California Government Code, Defendant County is generally liable for the actions of its employees under the theory of respondeat superior. Cal. Gov't. Code § 815.2. Therefore, to state a cause of action against Defendant, Plaintiff must plead facts that, if true, would expose a County employee to civil liability for false imprisonment. However, CPC section 847(b) provides that "[t]here shall be no civil liability on the part of . . . any peace officer . . ., acting within the scope of his or her authority, for . . . false imprisonment arising out of any arrest" if "[t]he arrest was lawful or the peace officer, at the time of the arrest, had reasonable cause to believe that the arrest was lawful." CPC § 847(b). Similarly, a jailer cannot be held liable for false imprisonment unless "he knew or should have known of the illegality of the imprisonment." Sullivan v. Cnty. of Los Angeles, 12 Cal.3d 710, 717-18 (1974). Accordingly, Defendant is immune from civil liability for falsely imprisoning Plaintiff unless one of its employees lacked reasonable cause to believe that Plaintiff's arrest was lawful, or knew or should have known that Plaintiff's imprisonment was illegal.

On February 7, 2011, Plaintiff failed to appear at his scheduled court appearance and Commissioner Danny Haukedalen sentenced Plaintiff to 55 days in jail for his failure to appear. FAC ¶¶ 12, 14. On February 8, 2011, a Deputy County Sheriff arrested Plaintiff and took him into custody. FAC ¶ 18. The

Commissioner's February 7, 2011 order, as well as the Clerk's minutes reflecting that order (FAC, Ex. 2), provided the arresting officer with "reasonable cause to believe that the arrest was lawful." CPC § 847(b). Moreover, the County employee who subsequently served as Plaintiff's "jailer" did not know or have reason to know that Plaintiff's imprisonment was illegal. The fact that the Warrant of Commitment was not issued and signed until March 4, 2011 is immaterial: both the arresting officer and the jailer could reasonably rely on the Clerk's minutes to reflect the Commissioner's order that Plaintiff be committed for 55 days. FAC, Ex. 2. Accordingly, Defendant County may not be held liable for false imprisonment of Plaintiff. CPC § 847(b).

Plaintiff's argument that Defendant is not immune from suit under the Eleventh Amendment is misplaced. Opp. at 2-3. Defendant claims statutory immunity, under CPC section 847(b)(1), rather than constitutional immunity under the Eleventh Amendment. Reply at 2. Indeed, Eleventh Amendment immunity does not extend to municipalities or political subdivisions of a state, such as Defendant County. Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977). Therefore, Plaintiff's Eleventh Amendment arguments are non-responsive to Defendant's claim of statutory immunity.

For the foregoing reasons, Plaintiff's first cause of action for false imprisonment is DISMISSED WITHOUT LEAVE TO AMEND. As Defendant is entitled to statutory immunity under CPC section 847(b), any attempts to amend the first cause of action would be futile. Eminence Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003).

B. Second Cause of Action--Negligence

Defendant argues that Plaintiff's second cause of action for negligence is barred by several sections of the California Government Code ("CGC"). Mot. at 5. Specifically, Defendant argues that the CGC immunizes a public entity from liability stemming from (1) "an injury to any prisoner," (2) interference with a prisoner's right to obtain a judicial determination or review of the legality of his confinement, and (3) failure to furnish or obtain medical care for a prisoner. Mot. at 5-6 (citing CGC § 844.6(a)(2)). Plaintiff does not directly address the issue of statutory immunity in his opposition brief.

Plaintiff alleges two distinct forms of harm in his negligence claim. FAC ¶ 33-61. First, Plaintiff alleges that Defendant "was ignorant of material facts about his incarceration that would have provided him an opportunity" to obtain a judicial determination as to the legality of his confinement. FAC ¶ 39. Second, Plaintiff alleges that Defendant failed to provide appropriate medical care despite its knowledge that Plaintiff suffered from high blood pressure, acute sleep apnea, diabetes, and "diminished strength due to a major stroke he suffered in early 2009." FAC ¶ 40-49.

Defendant cannot be held liable for "interfering with the right of a prisoner to obtain a judicial determination or review of the legality of his confinement," unless such interference was "intentional and unjustifiable." CGC § 845.4. Plaintiff has not alleged that Defendant's failure to bring him in front of a judge was an "intentional" interference with that right. Furthermore, based on the Clerk's minutes of the February 7, 2011 proceeding,

it cannot be said that Defendant's failure to provide Plaintiff with an opportunity to further challenge his confinement was "unjustifiable." Relying on the Clerk's minutes, Defendant was justified in concluding that Plaintiff had been sentenced to 55 days of confinement, and that no further judicial hearing was necessary. Accordingly, Defendant is statutorily immune from liability for interfering with Plaintiff's right to a judicial review of the legality of his confinement.

Moreover, Defendant cannot be held liable for an injury caused by the failure of a County employee to "furnish or obtain medical care for a prisoner in his custody," unless the prisoner is "in need of immediate medical care" and the employee "fails to take reasonable action to summon such medical care." CGC § 845.6. Although Plaintiff alleges that County employees were aware of his medical conditions, he does not allege that he was "in need of immediate medical care," within the meaning of the statute. Cf., Jett v. Penner, 439 F.3d 1091, 1099 (9th Cir. 2006) (finding that an inmate with a fractured thumb required immediate medical care to set and cast the fracture).

Furthermore, even if these conditions did require immediate medical care, Plaintiff does not allege that Defendant County failed to *summon* such care. Castaneda v. Dep't of Corr. & Rehab., 212 Cal.App.4th 1051, 1074 (2013) (distinguishing between the failure to summon medical care and negligence by those providing medical care, the latter of which the State may not be held liable for, under section 845.6). Plaintiff had contact with a "medical staff person" upon booking into the Sacramento County Jail. FAC ¶ 41. Plaintiff was originally provided with

his medication for high blood pressure, but "at some point during his incarceration," this medication ceased; Plaintiff was never provided with medication or treatment for diabetes or sleep apnea. FAC ¶¶ 43-49. California state courts have held that, "as a matter of statutory interpretation, . . . the act of a doctor *or other such professional* who, in the course of treatment of a prisoner, fails to prescribe and/or provide the correct medication is [not] the legal equivalent to a failure to summon medical care" under § 845.6. Nelson v. State of California, 139 Cal.App.3d 72, 80-81 (1982) (emphasis added). Defendant's alleged failure to provide medication to Plaintiff does not expose Defendant to liability under CGC section 845.6.

As CGC sections 844.6(a)(2), 845.4, and 845.6 preclude Defendant's liability for injuries to Plaintiff resulting from the negligence of Defendant or Defendant's employees, Plaintiff has failed to state a claim for relief in his second cause of action. Accordingly, Plaintiff's second cause of action is DISMISSED WITHOUT LEAVE TO AMEND. As Defendant is entitled to statutory immunity under the California Government Code, any attempts to amend the second cause of action would be futile. Eminence Capital, 316 F.3d at 1052.

C. Third Cause of Action—Civil Rights Claims

In his third cause of action, Plaintiff alleges a "violation of [his] civil rights." Although Plaintiff does not expressly invoke a statute, it can be inferred that Plaintiff's claim is brought pursuant to 42 U.S.C. § 1983. As Plaintiff has sued Defendant County, his civil rights claim takes the form of a

§ 1983 Monell claim. Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 691 (1978). To the extent that Plaintiff's first and second causes of action purport to state constitutional (rather than common law) claims, the analysis is identical to that set forth below.

Defendant argues that Plaintiff's third cause of action must be dismissed for failure to state a claim. Mot. at 7. Specifically, Defendant argues that Plaintiff has failed to allege a policy or custom that was the cause of any constitutional violations. Mot. at 7. Plaintiff responds that the "de facto policies and customs of incarceration in California" violated his rights under the Fourth, Eighth, and Fourteenth Amendments. Opp. at 19. Plaintiff also alleges that Defendant's policy of "segregating those incarcerated pursuant to a civil matter from those in criminal matters" resulted in the constitutional violations. FAC ¶ 64.

Although a municipality can be sued under § 1983, "it cannot be held liable unless a municipal policy or custom caused the constitutional injury." Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit, 507 U.S. 163, 166 (1993). Furthermore, the complaint must allege the policy, as well as its causal relationship to the constitutional injury, in sufficient detail. General or conclusory allegations will not suffice. See, e.g., Estate of Brooks ex rel. Brooks v. United States, 197 F.3d 1245, 1247 (9th Cir. 1999) (approving the dismissal of a Monell claim, on the grounds that "the complaint did not allege a deliberate County policy with sufficient particularity").

The only policy expressly alleged in the FAC is the County's

"policy of segregating those incarcerated pursuant to a civil matter from those in criminal matters." FAC ¶ 64. This policy is also described as "discriminating between an inmate being housed in the county jail pursuant to a civil matter rather than a criminal matter." FAC ¶ 63. Plaintiff further alleges that, "[a]s a proximate result of this policy," he suffered various constitutional harms. FAC ¶ 66-68. However, in his opposition brief, Plaintiff largely ignores this policy and does not explain the causal nexus between the policy and the constitutional harms alleged. Opp. at 9-10. Moreover, there is no self-evident causal relationship between a policy of separating individuals incarcerated in criminal and civil matters, and allegedly inhumane prison conditions. Plaintiff's mere conclusory allegation of a causal relationship between the policy and his constitutional injuries is insufficient to withstand Defendant's motion to dismiss. See Estate of Brooks, 197 F.3d at 1247 (elements of a Monell claim must be alleged with "sufficient particularity").

Plaintiff's argument that his incarceration violated the Fourth and Fourteenth Amendments is unpersuasive. Opp. at 4-9. This argument focuses on Plaintiff's allegations that the "Warrant of Commitment" did not issue until March 4, 2011, and that Plaintiff was never brought before a judicial magistrate after his confinement began. Opp. at 4-9. However, even assuming that these circumstances were improper, Plaintiff simply does not allege or argue that a County policy was the driving force behind these events. In lieu of citing the correct Monell standard, Plaintiff erroneously cites the standards for the good-

faith exception to the exclusionary rule and qualified immunity for *individual* government officials. Opp. at 7-8 (citing United States v. Leon, 468 U.S. 897 (1984) and Anderson v. Creighton, 483 U.S. 635 (1987)). Moreover, Plaintiff's reliance on Oviatt is misplaced. Oviatt By & Through Waugh v. Pearce, 954 F.2d 1470 (9th Cir. 1992). In Oviatt, the Ninth Circuit determined that a policy of inaction and deliberate indifference existed, where the County failed to take remedial action despite the fact that the Sheriff "knew of at least 19 incidents . . . in which individuals sat in jail for periods of undetermined length after they missed arraignment." Oviatt, 954 F.2d at 1478. The case at bar is markedly different, as there is no allegation that a policy-making County employee had knowledge of a similar pattern of incidents.

Likewise, Plaintiff's argument that Defendant violated his Eighth Amendment rights is unavailing. Opp. at 9-17. Plaintiff cites a number of cases in which prison conditions were found to violate the Eighth Amendment, and attempts to draw parallels to the conditions he allegedly endured in the present case. Opp. at 14-17. However, he fails to allege that a County policy caused these conditions or that a County employee at the policy-making level had actual or constructive knowledge of these conditions. Without doing so, Plaintiff cannot maintain a Monell claim based on a policy of inaction or deliberate indifference. Oviatt, 954 F.2d at 1477. Plaintiff relies heavily on Brown v. Plata, in which the U.S. Supreme Court examined various Eighth Amendment violations in the California state prison system. Brown v. Plata, 131 S.Ct. 1910 (2011). However, Plaintiff fails to draw a

connection between the conditions described in Plata, and those encountered by him while incarcerated in the entirely separate prison system run by Defendant County. Plaintiff's conclusion that the Plata ruling on state prison conditions placed Defendant on "constructive notice" of the alleged violations in Sacramento County Jail does not follow. Opp. at 13. Moreover, Plaintiff's contention that the "denial of medical care and deprivation of exercise and basic necessities" are the "de facto policies and customs of incarceration in California" is unsupported by the FAC. Opp. at 19. To find that an isolated instance of alleged mistreatment suggests "a practice so permanent and well settled as to constitute a 'custom or usage' with the force of law," would eviscerate the requirements of Monell altogether. Monell, 436 U.S. at 691. Plaintiff's citation to pre-Twombly case law is unhelpful in this regard, given the heightened pleading requirements that have subsequently developed. Opp. at 20 (citing Atchinson v. D.C., 73 F.3d 418 (D.C. Cir. 1996) and Leatherman v. Tarrant Cnty. Narcotics Intelligence & Coordination Unit, 507 U.S. 163 (1993)).

Finally, Plaintiff's argument that Defendant violated his procedural and substantive due process rights is unconvincing. Opp. at 9, 17-18. The only legal authority cited by Plaintiff in support of this argument is a case involving § 1983 liability of an individual government official. Cnty. of Sacramento v. Lewis, 523 U.S. 833 (1998). Indeed, in Lewis, the Court expressly acknowledged that "the issue of municipal liability is not before us." Lewis, 523 U.S. at 838 n. 2. As with Plaintiff's other arguments, it ultimately fails because Plaintiff fails to connect

the alleged constitutional violations to an official County policy. Monell, 436 U.S. at 691. Accordingly, Plaintiff's third cause of action is DISMISSED WITH LEAVE TO AMEND.

III. ORDER

For the foregoing reasons, Defendant's Motion to Dismiss is GRANTED. Defendant's Motion to Dismiss Plaintiff's first and second causes of action is GRANTED WITHOUT LEAVE TO AMEND. Defendant's Motion to Dismiss Plaintiff's third cause of action is GRANTED WITH LEAVE TO AMEND. Plaintiff's Second Amended Complaint must be filed within twenty (20) days from the date of this order. Defendant's responsive pleading is due within twenty (20) days thereafter. If Plaintiff elects not to file a Second Amended Complaint, the case will proceed without the Defendant County on the remaining causes of action.

IT IS SO ORDERED.

Dated: April 17, 2014

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE