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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JAMES D. HASS,

Plaintiff,

v.

COUNTY OF SACRAMENTO
DEPARTMENT OF SUPPORT
SERVICES, SACRAMENTO COUNTY
SHERIFF SCOTT JONES, ATTORNEY
SEAN GJERGE, and DOES 1
through X, inclusive,

Defendants.

No. 2:13-cv-01746 JAM KJN

**ORDER GRANTING DEFENDANT
COUNTY'S MOTION TO DISMISS**

18 This matter is before the Court on Defendant Sacramento
19 County's ("Defendant") Motion to Dismiss (Doc. #44) the first
20 cause of action in Plaintiff James Hass' ("Plaintiff") Third
21 Amended Complaint ("TAC") (Doc. #42). Plaintiff opposes the
22 motion (Doc. #49) and Defendant filed a reply (Doc. #51). For
23 the following reasons, Defendant's motion is GRANTED.¹

24 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

25 From February 8, 2011 to March 5, 2011, Plaintiff was

26
27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for January 14, 2015.

1 incarcerated in the Sacramento County Jail. TAC ¶ 9. Plaintiff
2 alleges that "Defendant County deprived Plaintiff of a humane
3 environment" during his incarceration. TAC ¶ 34. Specifically,
4 Plaintiff alleges that he was kept in a windowless cell along
5 with "large bags of kitchen garbage," and was not provided time
6 to exercise, shower, or "access news." TAC ¶ 22.

7 Plaintiff also alleges that, on his first day in custody, he
8 "went through the routine intake processing" at the jail, which
9 included "an interview with a person from the medical staff or
10 employee designated by Defendant County to obtain the medical
11 information from Plaintiff." TAC ¶¶ 37-38. During this
12 interview, Plaintiff disclosed a number of medical conditions
13 including hypertension, acute sleep apnea, diabetes, and a
14 history of strokes. TAC ¶ 39. Plaintiff was originally provided
15 with blood pressure medication but, at some point during his
16 incarceration, "Defendant County withdrew all medications from
17 Plaintiff and deprived Plaintiff of access to a [sleep apnea]
18 CPAP machine." TAC ¶¶ 45, 46. Plaintiff alleges that, "as a
19 proximate result of Defendant's deprivation to Plaintiff of his
20 legally prescribed medications and medical equipment," Plaintiff
21 "became fearful for his life," became "demoralized," suffered
22 "emotional distress, humiliation, depression and a decline in his
23 physical health." TAC ¶¶ 58, 59. Plaintiff also alleges that he
24 subsequently "became alienated from his wife and the marriage has
25 not been restored." TAC ¶ 64.

26 Plaintiff was represented by Sean Gjerde ("Defendant
27 Gjerde") in the family court matter which gave rise to his civil
28 confinement. SAC ¶ 4. Defendant Gjerde's representation of

1 Plaintiff is the subject matter of Plaintiff's second through
2 sixth causes of action. However, as Defendant County's motion to
3 dismiss only addresses Plaintiff's first cause of action, the
4 facts of Defendant Gjerde's representation are not relevant to
5 its motion and are not summarized here.

6 On March 7, 2012, Plaintiff filed the initial complaint in
7 Sacramento County Superior Court. On August 22, 2013, Defendants
8 removed the matter to this Court. On August 29, 2013, Defendant
9 County filed a motion to dismiss the initial complaint. On
10 December 20, 2013, the Court granted Defendant County's motion to
11 dismiss, but gave Plaintiff leave to amend his civil rights claim
12 against the County. On January 8, 2014, Plaintiff filed his
13 First Amended Complaint ("FAC"). On January 27, 2014, Defendant
14 County filed a motion to dismiss Plaintiff's FAC. On April 18,
15 2014, the Court granted Defendant County's motion to dismiss,
16 again giving Plaintiff leave to amend his civil rights claim. On
17 May 7, 2014, Plaintiff filed his Second Amended Complaint
18 ("SAC"). On May 27, 2014, Defendant County filed a motion to
19 dismiss Plaintiff's SAC. On October 8, 2014, the Court granted
20 Defendant County's motion to dismiss, again with leave to amend.

21 On October 27, 2014, Plaintiff filed his Third Amended
22 Complaint. The TAC includes the following causes of action:

- 23 (1) "Violation of Civil Rights - Defendant County;"
24 (2) Malpractice in the family law matter; (3) Malpractice for
25 failure to keep client advised; (4) Malpractice for loss of
26 \$70,000 from Home Depot; (5) Malpractice for loss of business,
27 personal assets and home; and (6) "Fraud and Deceit/False
28 Promise."

1 II. OPINION

2 Plaintiff's only claim against Defendant County alleges a
3 "violation of [his] civil rights." TAC at 3. As in his previous
4 complaints, Plaintiff does not expressly invoke a statute, but it
5 can be inferred that his claim is brought pursuant to 42 U.S.C.
6 § 1983. As Plaintiff has sued Defendant County, his civil rights
7 claim takes the form of a § 1983 Monell claim. Monell v. Dep't
8 of Soc. Servs. of City of New York, 436 U.S. 658, 691 (1978).

9 Although a municipality can be sued under § 1983, "it cannot
10 be held liable unless a municipal policy or custom caused the
11 constitutional injury." Leatherman v. Tarrant Cnty. Narcotics
12 Intelligence & Coordination Unit, 507 U.S. 163, 166 (1993).

13 Accordingly, to state a claim for municipal liability under
14 § 1983, a plaintiff must allege (1) that an official policy or
15 custom existed; (2) that the plaintiff suffered constitutional
16 injury; and (3) the existence of a causal link between the
17 policy/custom and the plaintiff's injury. Id. Moreover, each of
18 these elements must be alleged with "sufficient particularity"
19 and general or conclusory allegations will not suffice. See,
20 e.g., Estate of Brooks ex rel. Brooks v. United States, 197 F.3d
21 1245, 1247 (9th Cir. 1999) (approving the dismissal of a Monell
22 claim, on the grounds that "the complaint did not allege a
23 deliberate County policy with sufficient particularity").

24 Plaintiff argues that his civil rights were violated
25 because, "[d]uring his incarceration for 26 days in the
26 Sacramento County Main Jail, he was denied prescription
27 medications for high blood pressure and diabetes as well as his
28 medical equipment for acute sleep apnea." Opp. at 2. Plaintiff

1 argues that Defendant County should be held liable for this
2 deprivation because it had an official policy of "provid[ing] a
3 safe and humane environment" for inmates, and "the deficiencies
4 in the execution of the policy stem from a lack of training
5 and/or a lack of supervision." Opp. at 5-6. Relatedly,
6 Plaintiff argues that Defendant County was deliberately
7 indifferent to the violation of Plaintiff's civil rights. Opp.
8 at 13.

9 Plaintiff's continued reliance on the Mission and Goals
10 Statement published by Defendant County demonstrates a
11 fundamental misunderstanding of the Monell requirements. As the
12 Court wrote in its October 8, 2014 order:

13 [T]o the extent that Plaintiff's Monell claim is based
14 on the *failure to follow* Defendant County's statement
15 of "Mission and Goals," the causal link is missing: it
16 cannot be said that an official policy is the "moving
force" behind an injury caused by a violation of that
policy. Order at 6 (citing Monell, 436 U.S. at 694)
(emphasis in original).

17 Plaintiff has provided no authority or reasons for the Court to
18 reconsider this conclusion. Accordingly, Plaintiff cannot rely
19 on Defendant County's Missions and Goals Statement as an official
20 policy, for purposes of his Monell claim.

21 As Plaintiff has not alleged that an official County policy
22 caused the violations, his Monell claim rests entirely on his
23 allegations that Defendant County failed to adequately train its
24 employees in providing medical care to inmates. The Supreme
25 Court has held that a municipality's failure to train its
26 employees may create § 1983 liability where the "failure to train
27 amounts to deliberate indifference to the rights of persons with
28 whom the [employees] come into contact." City of Canton, Ohio v.

1 Harris, 489 U.S. 378, 388 (1989). The Court further explained
2 that, to establish a municipality's deliberate indifference, a
3 Plaintiff must show that "the need for more or different training
4 is so obvious, and the inadequacy so likely to result in the
5 violation of constitutional rights, that the policymakers of the
6 city can reasonably be said to have been deliberately indifferent
7 to the need." City of Canton, 489 U.S. at 390. Subsequently,
8 the Supreme Court noted that "[a] municipality's culpability for
9 a deprivation of rights is at its most tenuous where a claim
10 turns on a failure to train." Connick v. Thompson, 131 S.Ct.
11 1350, 1359 (2011). Moreover, "adequately trained officers
12 occasionally make mistakes; the fact that they do says little
13 about the training program or the legal basis for holding the
14 [municipality] liable." City of Canton, 489 U.S. at 391.

15 Plaintiff makes the following allegations, which directly
16 relate to his "failure to train" theory: "Defendant County failed
17 to adequately train and/or supervise its agents and/or employees
18 with respect to providing currently prescribed medications to
19 inmates" (TAC ¶ 54); "Defendant County demonstrated 'deliberate
20 indifference' to the welfare and health of Plaintiff" (TAC ¶ 55);
21 and "Defendant [County] failed to either supervise and/or train
22 staff at the Main Jail regarding identification [of] these
23 [suicide] risk factors and/or the procedures to follow to reduce
24 Plaintiff's distress and/or prevent injury or death" (TAC ¶ 32).
25 These allegations are precisely the type of "threadbare recitals
26 of the elements of a cause of action" that the Supreme Court has
27 cautioned will not withstand a motion to dismiss. Ashcroft v.
28 Iqbal, 556 U.S. 662, 678 (2009). The above statements are

1 unsupported by any specific factual allegations, regarding the
2 details of Defendant County's alleged training program, precisely
3 how that training program was deficient, or how such a deficiency
4 caused Plaintiff's injuries. In the absence of more specific
5 allegations, Plaintiff's "failure to train" theory of municipal
6 liability cannot survive Defendant County's motion to dismiss.

7 Plaintiff also fails to identify any individuals at a
8 policymaking level with Defendant County who acted with
9 "deliberate indifference" to Plaintiff's medical needs. As noted
10 above, a finding of deliberate indifference by a municipality is
11 only appropriate where "the need for more or different training
12 is so obvious, and the inadequacy so likely to result in the
13 violation of constitutional rights, that the policymakers of the
14 city can reasonably be said to have been deliberately indifferent
15 to the need." City of Canton, 489 U.S. at 390. Thus, the
16 relevant actions (or lack thereof) are those taken by individuals
17 *at the policymaking level*. At no point does Plaintiff allege
18 that policymakers were aware of his medical condition and failed
19 to provide proper care. Plaintiff generally alleges that
20 "Defendant County withdrew all medications from Plaintiff" and
21 that "Defendant County had actual knowledge of Plaintiff's
22 medical needs and conditions at the time that he was processed
23 into the Main Jail." TAC ¶¶ 42, 46. Plaintiff does not allege
24 that an individual at the policymaking level was personally
25 responsible for inmate intake or dispensation of medication, nor
26 would such an allegation be credible. Rather these allegations
27 appear to refer to the actions of individual non-policymaking
28 employees of Defendant County. Such actions are not relevant in

1 determining municipal liability.

2 For precisely the same reason, Plaintiff's argument that his
3 medical needs were obvious to Defendant County is misplaced.

4 Opp. at 9. Whether Plaintiff's medical needs were obvious to
5 non-policymaking individuals at the County Jail is irrelevant.
6 Rather, Plaintiff needs to have alleged that Defendant County's
7 policymakers were aware that their training program was
8 deficient, and that these policymakers made a "conscious or
9 deliberate" choice to ignore that deficiency. Rimac v. Duncan,
10 319 F. App'x 535, 538 (9th Cir. 2009). As discussed above,
11 Plaintiff has not sufficiently alleged such conduct.

12 Similarly, Plaintiff's argument as to the "risk factors for
13 suicide" identified by then-Jail Commander Scott Jones fails.
14 TAC ¶ 18. Plaintiff alleges that "Defendant took no actions to
15 reduce Plaintiff's distress or exposure to Defendant's identified
16 risk factors for suicide," primarily solitary confinement for a
17 first-time inmate. TAC ¶ 31. Again, in the absence of a
18 sufficiently alleged policy or custom of placing first-time
19 inmates in solitary confinement, such actions can only be
20 attributed to individual, non-policymaking employees of Defendant
21 County. These actions are not relevant in determining municipal
22 liability.

23 To the extent that Plaintiff attempts to argue that
24 Defendant County had developed an unofficial custom of failure to
25 properly provide medications to inmates, his allegations are
26 insufficient to establish such a custom. Plaintiff's sole
27 allegation in this regard is that "[b]etween 2007 and 2013, at
28 least 12 inmates in the custody of Defendant died as a result of

1 medical issues that arose while the inmate was in custody." TAC
2 ¶ 36. This statement is unaccompanied by any further allegations
3 as to the details of these 12 deaths. The fact that these deaths
4 occurred "as a result of medical issues that arose while the
5 inmate was in custody" does not necessarily mean that such deaths
6 resulted from improper care or failure to provide medication.
7 Without more, this barebones allegation is insufficient to
8 establish an unofficial County custom.

9 Finally, as to Plaintiff's continued reliance on the Supreme
10 Court's recent ruling in Brown v. Plata, the Court refers to the
11 finding made in its April 18, 2014 Order:

12 Plaintiff relies heavily on Brown v. Plata, in which
13 the U.S. Supreme Court examined various Eighth
14 Amendment violations in the California state prison
15 system. However, Plaintiff fails to draw a connection
16 between the conditions described in Plata, and those
17 encountered by him while incarcerated in the entirely
18 separate prison system run by Defendant County.
19 Plaintiff's conclusion that the Plata ruling on state
20 prison conditions placed Defendant on "constructive
21 notice" of the alleged violations in Sacramento County
22 Jail does not follow." Order at 12-13 (citations
23 omitted).

24 Plaintiff has presented no authority or reasons for the Court to
25 reconsider this finding.

26 Dismissal without leave to amend is appropriate only where
27 it is "clear . . . that the complaint could not be saved by
28 amendment." Eminence Capital, L.L.C. v. Aspeon, Inc., 316 F.3d
1048, 1052 (9th Cir. 2003). The Court has granted Plaintiff
leave to amend his complaint three times, and each time Plaintiff
has been unable to successfully do so. Moreover, in opposing
each of Defendant County's repeated motions to dismiss, Plaintiff
has continued to make arguments that have been consistently

1 rejected by the Court. See supra at 4-5, 8-9. The Court
2 concludes that allowing Plaintiff leave to file a fifth complaint
3 would be inappropriate, as amendment would be futile.

4 Defendant's motion to dismiss is GRANTED WITHOUT LEAVE TO AMEND.

5 III. ORDER

6 For the reasons set forth above, the Court GRANTS WITHOUT
7 LEAVE TO AMEND Defendant County's Motion to Dismiss Plaintiff's
8 first cause of action. As Plaintiff's sole cause of action
9 against Defendant County is dismissed without leave to amend, the
10 matter will proceed without Defendant County.

11 IT IS SO ORDERED.

12 Dated: January 22, 2015

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15 JOHN A. MENDEZ,
16 UNITED STATES DISTRICT JUDGE
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