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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TYRONE EDWARD HICKS,
Plaintiff,
v.
CITY OF VALLEJO, et al.,
Defendants.

No. 2:14-cv-0669 LKK DAD PS

ORDER

Plaintiff, Tyrone Edward Hicks, is proceeding in this action pro se. This matter was, therefore, referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). On August 8, 2014, the parties appeared before the court for hearing of defendants’ motion to dismiss plaintiff’s first amended complaint. Attorney Kelly Trujillo appeared telephonically on behalf of the defendants. Plaintiff Tyrone Hicks appeared in person on his own behalf.

Defendants’ motion asserts that plaintiff’s claim for punitive damages against the City of Vallejo, as well as any state law claims brought by plaintiff against any defendant, must be dismissed as a matter of law. (Dkt. No. 9.) In his opposition, filed on July 7, 2014, plaintiff did not address defendants’ arguments, but instead argued merely that he had a right to file a “complaint for federal claims in federal court.” (Dkt. No. 12 at 2.) At the August 8, 2014 hearing on defendant’s motion to dismiss plaintiff stated no opposition to the dismissal of his claim for

1 punitive damages against the City of Vallejo or to the dismissal of any state law causes of action
2 for unlawful prosecution. Plaintiff, however, requested leave to file a second amended complaint
3 to attempt to state a federal constitutional claim based upon the alleged unlawful towing of his
4 vehicle.¹

5 Defendants' motion to dismiss will be granted with plaintiff being granted leave to file a
6 second amend complaint with respect to his federal claims for false arrest, excessive use of force
7 and the unlawful towing of his vehicle. All of the claims which plaintiff wishes to proceed upon
8 must be alleged in his second amended complaint. Although not raised in the parties' papers or at
9 the August 8, 2014 hearing, plaintiff will also be granted leave to amend with respect to his
10 Monell claim. The court notes that plaintiff explicitly asserted in his first amended complaint that
11 he would "be seeking damages for 'Monell claims' against the City of Vallejo for their
12 longstanding, practice, policy or custom of allowing Vallejo Police Officers to use excessive
13 force." (Am. Compl. (Dkt. No. 4) at 5.)

14 With respect to his specific claims, plaintiff is advised that to state a claim under 42
15 U.S.C. § 1983 for violation of the Fourth Amendment based upon the alleged excessive use of
16 force, a complaint must allege that the amount of force used by a police officer was not
17 objectively reasonable in light of the totality of the circumstances facing the officer, taking into
18 account a range of factors to assess the amount of force used and the governmental interests at
19 stake. See Graham v. Conner, 490 U.S. 386, 396 (1989); Moss v. U.S. Secret Service, 711 F.3d
20 941, 966 (9th Cir. 2013). "[T]he most important single element" of the Graham framework is
21 "whether the suspect poses an immediate threat to the safety of the officers or others." Moss, 711
22 F.3d at 966 (quoting Chew v. Gates, 27 F.3d 1432, 1441 (9th Cir. 1994)).

23 To state a cognizable federal claim for unlawful seizure based upon a false arrest a
24 complaint must allege facts showing that the defendant "by means of physical force or show of
25 authority . . . in some way restrained the liberty of" the identified plaintiff. Graham, 490 U.S. at
26 395, n. 10 (citing Terry v. Ohio, 392 U.S. 1, 19, n. 16 (1968) and Brower v. County of Inyo, 489

27 ¹ Defendants did not move to dismiss plaintiff's constitutional claims based upon his allegations
28 of false arrest and the excessive use of force against him.

1 U.S. 593, 596 (1989)). “A claim for unlawful arrest is cognizable under § 1983 as a violation of
2 the Fourth Amendment, provided the arrest was without probable cause or other justification.”
3 Dubner v. City and County of San Francisco, 266 F.3d 959, 964-65 (9th Cir. 2001).

4 With respect to any municipal liability claim he seeks to bring, plaintiff is advised that a
5 municipality may be liable under § 1983 where the municipality itself causes the constitutional
6 violation through a “policy or custom, whether made by its lawmakers or those whose edicts or
7 acts may fairly be said to represent official policy,” pursuant to the decision in Monell v.
8 Department of Social Services, 436 U.S. 658, 6994 (1978). Municipal liability in a § 1983 case
9 may be premised upon: (1) an official policy; (2) a “longstanding practice or custom which
10 constitutes the standard operating procedure of the local government entity;” (3) the act of an
11 “official whose acts fairly represent official policy such that the challenged action constituted
12 official policy;” or (4) where “an official with final policy-making authority delegated that
13 authority to, or ratified the decision of, a subordinate.” Price v. Sery, 513 F.3d 962, 966 (9th Cir.
14 2008).

15 The Ninth Circuit has “long recognized that a custom or practice can be ‘inferred from
16 widespread practices or evidence of repeated constitutional violations for which the errant
17 municipal officers were not discharged or reprimanded.’” Hunter v. County of Sacramento, 652
18 F.3d 1225, 1233-34 (9th Cir. 2011) (quoting Nadell v. Las Vegas Metro. Police Dep’t, 268 F.3d
19 924, 929 (9th Cir. 2001)). See also Hunter v. County of Sacramento, No. 2:06-cv-0457 GEB
20 EFB, 2013 WL 3968663, at *4 (E.D. Cal. July 31, 2013) (“Likewise, a county custom or practice
21 may be inferred from evidence of repeated, but unreprimanded, constitutional violations.”). Such
22 a so-called Monell claim, however, must “contain sufficient allegations of underlying facts to
23 give fair notice” and those factual allegations “taken as true must plausibly suggest an entitlement
24 to relief” AE ex rel Hernandez v. County of Tulare, 666 F.3d 631, 637 (9th Cir. 2012)
25 (quoting Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

26 Finally, with respect to any constitutional claim plaintiff wishes to bring based upon the
27 alleged unlawful towing of his vehicle, plaintiff is advised that “[t]he impoundment of an
28 automobile is a seizure within the meaning of the Fourth Amendment.” Miranda v. City of

1 Cornelius, 429 F.3d 858, 862 (9th Cir. 2005). However, the Fourth Amendment allows for the
2 impoundment of a vehicle “under the community caretaking doctrine if the driver’s violation of a
3 vehicle regulation prevents the driver from lawfully operating the vehicle, and also if it is
4 necessary to remove the vehicle from an exposed or public location.” Id. at 865. “Whether an
5 impoundment is warranted under this community caretaking doctrine depends on the location of
6 the vehicle and the police officers’ duty to prevent it from creating a hazard to other drivers or
7 being a target for vandalism or theft.” Ramirez v. City of Buena Park, 560 F.3d 1012, 1025 (9th
8 Cir. 2009) (quoting Miranda, 429 F.3d at 864). See also South Dakota v. Opperman, 428 U.S.
9 364, 369 (1976) (“The authority of police to seize and remove from the streets vehicles impeding
10 traffic or threatening public safety and convenience is beyond challenge.”); United States v.
11 Cervantes, 703 F.3d 1135, 1142 (9th Cir. 2012) (community caretaking exception did not justify
12 impoundment of vehicle that had been “appropriately pulled to the curb” in a residential
13 neighborhood); Mateos-Sandoval v. County of Sonoma, 924 F. Supp.2d 890, 910 (N.D. Cal.
14 2013) (rejecting community caretaking argument on motion to dismiss where complaint alleged
15 vehicle was stopped in a safe, legal location and not blocking traffic).

16 With respect to the general requirements of his second amended complaint, plaintiff is
17 advised that although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a
18 complaint must give the defendant fair notice of the plaintiff’s claims and must allege facts that
19 state the elements of each claim plainly and succinctly. FED. R. CIV. P. 8(a)(2); Jones v.
20 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels
21 and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’ Nor
22 does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual
23 enhancements.’” Ashcroft v. Iqbal, 556 U.S.662, 678 (2009) (quoting Twombly, 550 U.S. at 555,
24 557. A plaintiff must allege with at least some degree of particularity overt acts which the
25 defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at 649.

26 Plaintiff is cautioned, however, that “the tenet that a court must accept as true all of the
27 allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of
28 the elements of a cause of action, supported by mere conclusory statements, do not suffice.”

1 Ashcroft, 556 U.S. at 678. “While legal conclusions can provide the complaint’s framework, they
2 must be supported by factual allegations.” Id. at 679. Those facts must be sufficient to push the
3 claims “across the line from conceivable to plausible[.]” Id. at 680 (quoting Twombly, 550 U.S.
4 at 557).

5 In the second amended complaint plaintiff must allege facts demonstrating how the
6 conditions complained of resulted in a deprivation of his federal constitutional or statutory rights.
7 See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Moreover, plaintiff must allege in specific
8 terms how each named defendant was involved in the deprivation of his rights. There can be no
9 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
10 defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v.
11 Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.
12 1978). Vague and conclusory allegations of official participation in civil rights violations are not
13 sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

14 Plaintiff is also reminded that the court cannot refer to a prior pleading in order to make an
15 amended complaint complete. Local Rule 220 requires that any amended complaint be complete
16 in itself without reference to prior pleadings. The second amended complaint will supersede the
17 first amended complaint just as the first amended complaint superseded the original complaint.
18 See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, in the second amended complaint, just
19 as if it were the initial complaint filed in the case, each defendant must be listed in the caption and
20 identified in the body of the complaint, and each claim and the involvement of each defendant
21 must be sufficiently alleged. The second amended complaint must also include concise but
22 complete factual allegations describing the conduct and events which underlie plaintiff’s claims.

23 CONCLUSION

24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Defendants’ June 16, 2014 amended motion to dismiss (Dkt. No. 9) is granted.
- 26 2. Plaintiff is granted twenty-eight days from the date of this order to file a second
27 amended complaint as discussed above.

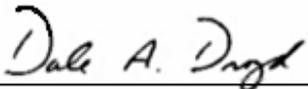
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3. If any defendant named in the first amended complaint is named as a defendant in the second amended complaint filed by plaintiff, that defendant shall respond to the pleading within twenty-one days after it is filed and served.

4. Plaintiff is cautioned that the failure to timely file a second amended complaint may result in a recommendation that this action be dismissed for failure to comply with the court's order and for failure to prosecute this action.

Dated: August 13, 2014



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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