

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JORDAN FAGAN,

Plaintiff,

v.

COUNTY OF SACRAMENTO; and
DOES 1-20,

Defendants.

No. 2:15-cv-01755-GEB-KJN

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

Defendant County of Sacramento ("County") seeks dismissal of Plaintiff Jordan Fagan's Complaint, under Federal Rule of Civil Procedure ("Rule") 12(b)(6), "for failure to state a claim upon which relief can be granted." (Notice of Mot. and Mot. to Dismiss Compl. 1:22-23, ECF No. 5.) Plaintiff's Complaint alleges a single claim, under 42 U.S.C. § 1983, against the County and Doe defendants. (Compl. ¶¶ 11-29, ECF No. 1.)

I. FACTUAL ALLEGATIONS

The following factual allegations in the Complaint concern the motion:

On July 24, 2014, while being detained at Sacramento County Jail, Plaintiff was handcuffed and being transferred from one room to another by two Sheriff Deputies. A third Sheriff's deputy then came and swept Plaintiff's feet from underneath him. Plaintiff hit the ground face first causing him to break three of his front teeth, along with a large laceration underneath his bottom

1 lip. As a result, Plaintiff received eleven
2 stitches to the close up the laceration
3 underneath his bottom lip and is undergoing
multiple dental treatments to fix his three
broken teeth.

4 (Compl. ¶ 9) "Plaintiff filed a complaint with the Sheriff's
5 Department immediately following the incident and after being
6 informed by a Sherriff's Department employee that filing a
7 complaint was the proper procedure. Plaintiff received a letter
8 from the Sherriff's Department, dated December 2, 2014,
9 sustaining his complaint." (Compl. ¶ 10.)

10 II. LEGAL STANDARD

11 "To survive a motion to dismiss, a complaint must
12 contain sufficient factual matter, accepted as true, to state a
13 claim to relief that is plausible on its face." Caviness v.
14 Horizon Cmty. Learning Ctr., Inc., 590 F.3d 806, 812 (9th Cir.
15 2010) (quoting Ashcroft v. Iqbal, 556 U.S. 662 (2009)). "A claim
16 has facial plausibility when the plaintiff pleads factual content
17 that allows the court to draw the reasonable inference that the
18 defendant is liable for the misconduct alleged." Iqbal, 556 U.S.
19 at 678 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556
20 (2007)). "Determining whether a complaint states a plausible
21 claim for relief . . . [is] a context-specific task that requires
22 the . . . court to draw on its judicial experience and common
23 sense." Id. at 679. Further, "the court need not accept as true
24 conclusory allegations, nor make unwarranted deductions or
25 unreasonable inferences." In re Gilead Sciences Secs. Litig., 536
26 F.3d 1049, 1057 (9th Cir. 2008) (citations omitted).

27 Specifically, "[t]o survive a motion to dismiss [a
28 § 1983 municipal liability claim], 'a bare allegation that

1 government officials' conduct conformed to some unidentified
2 government policy or custom' is insufficient; instead,
3 plaintiffs' complaint must include 'factual allegations
4 that . . . plausibly suggest an entitlement to relief, such that
5 it is not unfair to require the opposing party to be subjected to
6 the expense of discovery and continued litigation.'" Shelley v.
7 Cty. of San Joaquin, 954 F. Supp. 2d 999, 1009 (E.D. Cal. 2013)
8 (quoting AE ex rel. Hernandez v. Cty. of Tulare, 666 F.3d 631,
9 637 (9th Cir. 2012)).

10 III. DISCUSSION

11 The County argues Plaintiff's Complaint should be
12 dismissed, arguing, *inter alia*, "[t]here is no *respondeat*
13 *superior* liability for municipalities under Section 1983" and
14 "the [C]omplaint alleges no factual material showing the
15 existence of a County policy or custom that was deliberately
16 indifferent to [P]laintiff's constitutional rights." (Mem. P. &
17 A. ISO Def.'s Mot. to Dismiss ("Mot.") 2:6-7, 2:26, 3:16-17, ECF
18 No. 5-1.)

19 Plaintiff agrees the County's "legal analysis appears
20 to have merit" and "[a]t present, Plaintiff cannot articulate
21 additional facts to support the culpability of the moving party."
22 (Pl.'s P.&A. ISO Opp'n to Mot. ("Opp'n") 1:23, 3:12-14, ECF
23 No. 7.) However, Plaintiff argues, *inter alia*, the County's
24 "motion to dismiss should be denied until Plaintiff has had
25 reasonable time to conduct discovery." (Opp'n 4:2-4.)

26 The Supreme Court held in Monell v. Department of
27 Social Services of City of New York, 436 U.S. 658 (1978), that
28 "[m]unicipalities are considered 'persons' under 42 U.S.C. § 1983

1 and thus may be liable for a constitutional deprivation." Waggy
2 v. Spokane Cnty. Washington, 594 F.3d 707, 713 (9th Cir. 2010)
3 (citing Monell, 436 U.S. at 690). However, "it is only when
4 execution of a government's policy or custom inflicts the injury
5 that the municipality as an entity is responsible." Id.
6 (alteration removed) (citation omitted). "[A] municipality cannot
7 be held liable under § 1983 on a *respondeat superior* theory, that
8 is, solely because it employs a tortfeasor." Anderson v. Warner,
9 451 F.3d 1063, 1070 (9th Cir. 2006) (internal quotation marks
10 omitted).

11 Therefore, "[Plaintiff] must [plausibly allege] (1)
12 that he possessed a constitutional right of which he was
13 deprived; (2) that the [County] had a policy; (3) that the policy
14 amounts to deliberate indifference to [Plaintiff's]
15 constitutional right; and (4) that the policy is the moving force
16 behind the constitutional violation." Id. (emphasis added)
17 (internal citations and quotation marks omitted).

18 Plaintiff alleges in the Complaint: "The Defendants to
19 this claim at all times relevant hereto were acting pursuant to
20 municipal/county custom, policy, decision, ordinance, regulation,
21 widespread habit, usage, or practice in their actions pertaining
22 to [Plaintiff]." (Compl. ¶ 27.)

23 Plaintiff's allegations "simply recite the elements of
24 a [Monell] cause of action, . . . [and do not] contain sufficient
25 allegations of underlying facts to give fair notice and to enable
26 the opposing party to defend itself effectively." Hernandez, 666
27 F.3d at 637.

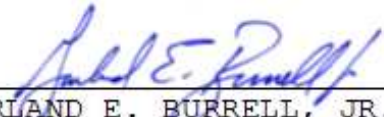
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

Since Plaintiff has not alleged a plausible claim against the County, the County's motion to dismiss Plaintiff's Complaint against it is granted. Plaintiff is granted fourteen (14) days from the date on which this order is filed to file a First Amended Complaint addressing the referenced deficiencies. Plaintiff is notified that this action may be dismissed with prejudice under Federal Rule of Civil Procedure 41(b) if Plaintiff fails to file an amended complaint within the prescribed time period.

Dated: January 6, 2016



GARLAND E. BURRELL, JR.
Senior United States District Judge