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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JORDAN FAGAN,

Plaintiff,

v.

COUNTY OF SACRAMENTO; JOHN
DOE; JAMES DOE; JANE DOE; and
DOES 1-20, inclusive,

Defendants.

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

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

Defendant County of Sacramento (the "County") seeks to dismiss the claim brought against it in Jordan Fagan's First Amended Complaint, because he fails to adequately state a Monell claim. For the following reasons, the County's motion is granted with prejudice.¹

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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 22, 2016.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 For purposes of this motion, the following facts are taken
3 as true by the Court.

4 While detained at the Sacramento County Jail on July 24,
5 2014, two unidentified Deputy Sheriff Defendants handcuffed and
6 transferred Plaintiff from one room to another. First Am. Compl.
7 for Civil Rights Violation (FAC) ¶ 13. A third unidentified
8 Deputy Sheriff Defendant approached Plaintiff and swept his "feet
9 from underneath him." Id. As a result, Plaintiff's face hit the
10 ground, causing three broken teeth and a laceration underneath
11 his bottom lip. Id. Thereafter, Plaintiff filed a complaint
12 with the Sacramento County Sheriff's Department (the
13 "Department"), and he received a letter from the Department,
14 dated December 2, 2014, sustaining his complaint. Id. ¶ 14.

15 Plaintiff filed his initial complaint on August 18, 2015
16 (Doc. #1), and the County moved to dismiss the complaint on
17 September 10, 2015 (Doc. #5). The Court granted the County's
18 motion with leave to amend on January 7, 2016 (Doc. #13).
19 Plaintiff then filed his First Amended Complaint, which includes
20 two claims for excessive force under 42 U.S.C. § 1983, with the
21 first claim brought against three Doe Defendants and the second
22 claim brought against the County (Doc. #16). The County filed a
23 motion to dismiss on January 26, 2016, accompanied by requests
24 for judicial notice (Doc. #18). Plaintiff filed an opposition
25 (Doc. #20).

1 II. OPINION

2 A. Judicial Notice

3 The County requests the Court judicially notice (Doc. #18-2)
4 the First Amended Complaint and the Court's order on January 7,
5 2016. The First Amended Complaint and the Court's order are
6 already part of the record in this case, and therefore, the
7 request is denied as unnecessary.

8 B. Analysis

9 The County argues, *inter alia*, that the second claim brought
10 against it—for excessive force under § 1983—must be dismissed
11 because Plaintiff has failed to allege facts sufficient to
12 establish “the existence of a County policy or custom that was
13 deliberately indifferent to [P]laintiff’s constitutional rights.”
14 Mem. of P. & A. ISO Def.’s Mot. to Dismiss FAC (“Mot.”) 3:24–26.

15 Plaintiff opposes, arguing his factual allegations against
16 the County are sufficient to proceed to discovery. Pl.’s P. & A.
17 ISO Opp’n to Mot. (“Opp’n”) 1:22–24.

18 “[A] municipality can be sued under § 1983, but it cannot be
19 held liable unless a municipal policy or custom caused the
20 constitutional injury.” Leatherman v. Tarrant Cty. Narcotics
21 Intelligence & Coordination Unit, 507 U.S. 163, 166 (1993). A
22 “policy or custom” under Monell v. Department of Social Services
23 of City of New York, 436 U.S. 658 (1978), is “a longstanding
24 practice . . . which constitutes the standard operating procedure
25 of the local government entity.” Ulrich v. City & Cty. of San
26 Francisco, 308 F.3d 968, 984 (9th Cir. 2002) (internal quotation
27 marks omitted). “Furthermore, the complaint must allege the
28 policy, as well as its causal relationship to the constitutional

1 injury, in sufficient detail." Hass v. Sacramento Cty. Sheriff's
2 Dep't, 2014 WL 1616440, at *5 (E.D. Cal. Apr. 18, 2014).

3 Plaintiff points to the following new factual allegations in
4 his First Amended Complaint: "Plaintiff is informed and believes
5 that Deputy Sheriffs at the Sacramento County jail has [sic] had
6 a custom of using excessive force and that Defendant County of
7 Sacramento has had a history of not investigating constitutional
8 violations and/or not punishing Deputy Sheriff's for such acts."
9 FAC ¶ 35. This does not plead facts sufficient to support that
10 the County had an impermissible policy or custom that violated
11 Plaintiff's constitutional rights. The remainder of Plaintiff's
12 First Amended Complaint is similarly insufficient. Specifically,
13 Plaintiff alleges just one, specific instance of interaction
14 between Plaintiff and the Deputy Sheriffs; this single instance
15 is insufficient to allege a policy or custom of using excessive
16 force.

17 In his opposition brief, Plaintiff relies on Hunter v.
18 County of Sacramento, 652 F.3d 1225 (9th Cir. 2011), arguing it
19 establishes a factual basis for his second claim. He explains
20 that in Hunter, plaintiffs' expert "found that officials in the
21 [Sacramento County] Main Jail repeatedly failed to investigate
22 incidents of excessive force and to take disciplinary action
23 against guards who used such force, despite the existence of an
24 official policy prohibiting the use of excessive force." Id. at
25 1234; Opp'n 6:17-21. The Court agrees with the County that
26 "Hunter establishes no factual basis for the instant claim."
27 Reply to Opp'n 3:21.

28 For these reasons, Plaintiff's second claim brought against

1 the County is dismissed. Plaintiff has had two opportunities to
2 properly plead a claim against the County and the Court finds
3 that any further attempt to amend would be futile.

4 Although the County states it seeks dismissal of Plaintiff's
5 entire First Amended Complaint, Notice of Mot. & Mot. to Dismiss
6 FAC 1:22-23, Plaintiff's first claim is not brought against the
7 County, and the County has not asserted any reason for dismissal
8 of this claim. Therefore, Plaintiff's first claim survives but
9 the second claim is dismissed with prejudice.

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III. ORDER

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For the reasons set forth above, the County's motion is
GRANTED WITH PREJUDICE as to the second claim in Plaintiff's
First Amended Complaint.

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IT IS SO ORDERED.

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Dated: April 6, 2016

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/s/ John A. Mendez

HONORABLE JOHN A. MENDEZ

UNITED STATES DISTRICT JUDGE

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