UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEROME HILL,

Plaintiff,

v.

FAIRFIELD POLICE DEPARTMENT; CITY OF FAIRFIELD, a municipal corporation; REBECCA BELK, individually and as a Police Officer for the CITY OF FAIRFIELD; MICHAEL AMBROSE, individually and as a Police Officer for the CITY OF FAIRFIELD; and DOES 1-50,

Defendants.

No. 2:15-cv-1820-MCE-KJN

MEMORANDUM AND ORDER

Plaintiff Jerome Hill ("Plaintiff") brings claims under 42 U.S.C § 1983 against the City of Fairfield, the Fairfield Police Department and City of Fairfield Police Officers Rebecca Belk ("Belk") and Michael Ambrose ("Ambrose") (collectively "Defendants"). According to Plaintiff, Defendants violated his constitutional rights when he was injured while being detained by Officers Belk and Ambrose. Defendants responded by filing the present Motion to Dismiss (ECF No. 18) seeking to dismiss Plaintiff's claims against the City of Fairfield. For the reasons that follow, Defendants' Motion is GRANTED.[1, 2]

[1] Because oral argument would not have been of material assistance, the Court ordered this

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BACKGROUND

Plaintiff is an adult male and United States Army veteran. Pl.'s First Amended Complaint ("FAC") ¶2, ECF No. 17. On June 2, 2014, Plaintiff and two others were sitting in a parked car across the street from Plaintiff's home in Fairfield, CA. Id. at ¶ 9. While Plaintiff was sitting in the car, Defendants Belk and Ambrose detained Plaintiff and the car's other occupants, purportedly without probable cause or reasonable suspicion.[3] Id.

At that time, Belk and Ambrose confirmed that Plaintiff did in fact live across the street and that none of the occupants of the car were on probation or parole. Id. at ¶ 10. Belk nevertheless donned gloves and ordered Plaintiff to exit the car. Id. Plaintiff alleges that, without any justification, Belk then reached into the car and put Plaintiff's left wrist in a wrist lock, causing him severe pain, and ordered Plaintiff to place his right hand on the back of his head and continue to exit the car. Id. Plaintiff alleges that he complied, despite pain from the wrist lock. Id.

Once outside the car, Plaintiff contends that Ambrose grabbed him by the head and attempted to slam him down onto the street. Id. at ¶ 11. Belk and Ambrose then fired their Taser guns at Plaintiff multiple times. Id. Plaintiff was struck by Belk's and Ambrose's Tasers in the left eyeball, back and thigh. Id. While Plaintiff was on the ground covering his left eye, Belk and Ambrose allegedly fired their Tasers into Plaintiff's buttocks. Id. Ambrose handcuffed Plaintiff, who remained lying in the street and was bleeding from his eye. Id. According to Plaintiff, the barbed Taser dart remained dangling from his left eyeball, causing bleeding and extreme pain. Id. ¶ 12.

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matter submitted on the briefs. E.D. Cal. Local Rule 230(g).

[2] Since the Court dismisses claims against the City of Fairfield, Defendants' request to strike Plaintiff's prayer for punitive damages against Fairfield is moot.

[3] Plaintiff does not explain in the FAC why he was stopped and detained in the first place or what exactly led to the events that followed. In any event, for purposes of this Motion the Court need not make any findings with regard to the initial detention.

An ambulance arrived and took Plaintiff to an emergency room in Fairfield, where the Taser dart was surgically removed from Plaintiff's eye. Id. at ¶ 13. Plaintiff's left eye was subsequently removed due to damage from the barbed Taser dart. Id.

For purposes of the present case, Plaintiff alleges that the City of Fairfield has an entrenched culture, policy, or practice of tolerating and ratifying improper detentions and arrests, racial profiling, use of excessive force and fabrication of official reports. Id. at ¶ 16. He further contends that City of Fairfield police officers have a long history of using excessive force to carry out corrupt schemes and motives and that the City of Fairfield has failed to discipline or retrain any of the officers that purportedly used excessive force for corrupt purposes. Id. at ¶ 19. Plaintiff thus concludes that it is the official policy of Fairfield, out of indifference to its minority residents, to allow police abuse of its citizens. Id. at ¶ 18.

STANDARD

On a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief" in order to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require detailed factual allegations. However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (internal citations and quotations omitted). A court is not required to accept as true a "legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009)

(quoting Twombly, 550 U.S. at 555). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain something more than "a statement of facts that merely creates a suspicion [of] a legally cognizable right of action.")).

Furthermore, "Rule 8(a)(2) . . . requires a showing, rather than a blanket assertion, of entitlement to relief." Id. at 556 n.3 (internal citations and quotations omitted). Thus, "[w]ithout some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirements of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Id. (citing 5 Charles Alan Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. If the "plaintiffs . . . have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Id. However, "[a] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

A court granting a motion to dismiss a complaint must then decide whether to grant leave to amend. Leave to amend should be "freely given" where there is no "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment . . . ." Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to be considered when deciding whether to grant leave to amend). Not all of these factors merit equal weight. Rather, "the consideration of prejudice to the opposing party . . . carries the greatest weight." Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that "the complaint could not be saved by any amendment." Intri-Plex Techs. v. Crest Group,

Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) ("Leave need not be granted where the amendment of the complaint . . . constitutes an exercise in futility . . . .")).

ANALYSIS

Plaintiff contends that: (1) the City of Fairfield violated 42 U.S.C. § 1983 when it failed to properly train its police officers, including Belk and Ambrose, and ratified an alleged pattern of police misconduct (Second Cause of Action); and (2) the City of Fairfield had a custom, policy, or practice of condoning police misconduct in violation of the Fourth Amendment (Third Cause of Action). FAC at ¶¶ 31-33, 37, 42. The Court addresses each claim in turn.[4]

A. Plaintiff Fails to State Section 1983 Claims for "Failure to Train" and "Ratification" Against the City of Fairfield.

1. Plaintiff's "failure to train" claim

Plaintiff alleges that Fairfield failed to train its officers, including Belk and Ambrose, in the proper manner in which to respond when dealing with individuals using medical cannabis. Id. at ¶ 32. In addition, Plaintiff alleges that Fairfield failed to properly train its officers in effective and appropriate methods of executing search warrants. Id. at ¶ 33.

To impose liability on a municipality for failure to adequately train its police officers, the municipal failure must amount to deliberate indifference to a constitutional right. Clouthier v. County of Contra Costa, 591 F.3d 1232, 1249 (9th Cir. 2010). The

[4] In his Opposition (ECF No. 20) Plaintiff states that he also brings claims under the Fifth and Ninth Amendments to the United States Constitution against Officers Belk and Ambrose. However, Plaintiff's FAC makes no mention of these constitutional claims. In any event, Defendants move for dismissal of claims against the City of Fairfield, not Belk and Ambrose. Plaintiff's discussion of un-alleged claims under the Fifth and Ninth Amendments is non-responsive to Defendants' Motion, and there are no claims under the Fifth or Ninth Amendments for the Court to dismiss.

standard is met when the need for more or different training is so obvious, and the inadequacy so likely to result in a constitutional violation, that municipal policymakers can be said to have been deliberately indifferent to the need. Id. A "failure to train" claim must reflect a deliberate and conscious choice by a municipality declining to act. Id. at 1250.

Plaintiff has not adequately set forth a "failure to train" claim. Plaintiff's allegations that the City of Fairfield failed to train their officers in dealing with medical cannabis users and executing search warrants are wholly irrelevant to his claim against the City, which relates to training deficiencies pertaining to excessive force. Plaintiff does not allege that he was using medical cannabis, or that medical cannabis was even involved in the June 2 incident. Nor does Plaintiff allege that the June 2 incident involved a search warrant. Plaintiff cannot state a claim for "failure to train" when the alleged training deficiencies he identifies are completely independent of the alleged constitutional violation. Id. (alleged failure to train must be actual cause of injury).

2. Plaintiff's "ratification" claim

Plaintiff also alleges that the City of Fairfield ratified Belk's and Ambrose's conduct when it failed to discipline them for their actions. FAC at ¶ 16. To impose municipal liability under a ratification theory, a plaintiff must show that the authorized policymakers approved a subordinate's decision and the basis for it. Lytle v. Carl, 382 F.3d 978, 987 (9th Cir. 2004). The policymaker must have knowledge of the constitutional violation and actually approve of it. Id. Mere failure to overrule a subordinate's actions, without more, is insufficient to support a § 1983 claim. Id. In addition, the Ninth Circuit "appears to require something more than a failure to reprimand to establish a municipal policy or ratification." Kanae v. Hodson, 294 F. Supp. 2d 1179, 1189 (D. Haw. 2003). Vague and conclusory allegations of official participation in § 1983 violations are not sufficient to withstand a motion to dismiss. Arres v. City of Fresno, 2011 WL 284971, at *17 (E.D. Cal. Jan. 26, 2011).

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Plaintiff's allegations are conclusory and formulaic and fail to state a municipal liability claim under a retaliation theory. Beyond a bare assertion that Belk and Ambrose were not disciplined, Plaintiff alleges only that the City of Fairfield "approved, ratified, condoned, encouraged and/or tacitly authorized the continuing pattern and practice of misconduct." FAC at ¶ 31. Plaintiff offers no facts permitting an inference that Belk's and Ambrose's supervisors approved of their conduct. To the extent that Plaintiff relies on his allegations that City of Fairfield officers have "pleaded guilty to obstruction of justice, bribery, and other related crimes," Id. at ¶ 39, these allegations are similarly unsupported by any facts. Plaintiff's ratification claim is thus a formulaic recital of the elements, and fails to satisfy pleading requirements.

3. Plaintiff's Fourteenth Amendment claims

Plaintiff purports to bring § 1983 claims in his second cause of action under both the Fourth and Fourteenth Amendments. FAC at ¶ 35. Municipal liability under § 1983 must be based on an underlying constitutional violation. Aguilera v. Baca, 510 F.3d 1161, 1174 (9th Cir. 2007). The first step in any such claim is to identify the specific constitutional right allegedly infringed. Albright v. Oliver, 510 U.S. 266, 271 (1994). When a particular Amendment provides an explicit textual source of constitutional protection against particular government behavior, that Amendment must be the guide for analyzing the claim. Id. at 273.

Against this backdrop, Plaintiff's Fourteenth Amendment claim against the City of Fairfield cannot stand. All claims that law enforcement officers have used excessive force in the course of an arrest, detention, or other seizure must be analyzed under the Fourth Amendment, and as indicated above, Plaintiff has not stated a cognizable claim for municipal liability against the City on excessive force grounds. Graham v. Connor, 490 U.S. 386 (1989). Moreover, to the extent that Plaintiff attempts to allege an equal protection violation under the Fourteenth Amendment, this claim must also fail. To state an equal protection violation under § 1983 and the Fourteenth Amendment, Plaintiff must show that the City acted with an intent or purpose to discriminate against Plaintiff

based on his membership in a protected class. Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001). A claim that the plaintiff is a minority, the arresting officer is Caucasian, and they disagree over the reasonableness of an arrest is insufficient. Bingham v. City of Manhattan Beach, 341 F.3d 939, 948 (9th Cir. 2003), overruled on other grounds by Edgerly v. City and County of San Francisco, 599 F.3d 946, 956 n.14 (9th Cir. 2010). Plaintiff alleges no facts indicating that he is a member of a protected class, was treated differently by the City because of that membership, or that the City's actions, or that of its officers, were motivated by discrimination. Plaintiff therefore fails to state a § 1983 claim against the City of Fairfield under the Fourteenth Amendment.

B. Plaintiff Fails to State a Section 1983 Claim Against the City of Fairfield Based on an "Official Municipal Policy."

Plaintiff's third cause of action alleges that the City of Fairfield violated § 1983 due to acts and omissions amounting to "a custom, policy or repeated practice of condoning and tacitly encouraging the abuse of police authority." FAC at ¶ 37. Plaintiffs seeking to impose municipal liability under § 1983 must show that "action pursuant to official municipal policy" caused the injury. Connick v. Thompson, 563 U.S. 51, 60-61 (2011). An "official municipal policy" includes practices "so persistent and widespread as to practically have the force of law." Id. at 61.

Here, Plaintiff has alleged only that Belk and Ambrose acted inappropriately. A plaintiff cannot prove the existence of a municipal policy or custom based solely on the occurrence of a single incident of unconstitutional action by a non-policymaking employee. Davis v. City of Ellensburg, 869 F.2d 1230, 1233-34 (9th Cir. 1989), overruled on other grounds by Beck v. City of Upland, 527 F.3d 853 (9th Cir. 2008). Despite Plaintiff's belief that a municipal policy or custom exists, FAC at ¶¶ 16-20, Plaintiff's factual allegations involve only the actions of Belk and Ambrose. Aside from these actions, Plaintiff sets forth no facts leading to an inference that the City of Fairfield had an unconstitutional policy or custom of police misconduct.

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CONCLUSION

Defendants’ Motion to Dismiss (ECF No. 18) is GRANTED with leave to amend. Not later than twenty (20) days following the date this Memorandum and Order is electronically filed, Plaintiff may (but is not required to) file an amended complaint. If no amended complaint is filed, the causes of action dismissed by virtue of this Order will be deemed dismissed with prejudice upon no further notice to the parties.

IT IS SO ORDERED.

Dated: May 4, 2016

MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT