

1

2

3

4

5

6

7

8

UNITED STATES DISTRICT COURT

9

EASTERN DISTRICT OF CALIFORNIA

10

11

NANDI CAIN JR.,

No. 2:17-cv-00848-JAM-DB

12

Plaintiff,

13

v.

**ORDER GRANTING COUNTY OF
SACRAMENTO'S MOTION TO DISMISS**

14

CITY OF SACRAMENTO, et al.,

15

Defendants.

16

17

Nandi Cain Jr. ("Plaintiff") filed this action against Officer Anthony Figueroa, the City of Sacramento, the County of Sacramento, and a number of Doe defendants for constitutional violations stemming from a disturbing confrontation, arrest, and detention. The County of Sacramento ("County") seeks dismissal of the Monell claim asserted against it. For the reasons set forth below, the Court grants the County's Motion to Dismiss, with leave to amend.¹

25

26

27

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 August 29, 2017.

28

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 Nandi Cain ("Plaintiff") alleges (and for purposes of this
3 motion the Court takes as true) that the following events
4 transpired:

5 On April 10, 2017, Officer Anthony Figueroa stopped
6 Plaintiff as he was walking down Cypress Street in Del Paso
7 Heights. Compl., ECF No. 1, ¶¶ 11-13. After Plaintiff
8 questioned the officer's motives, Officer Figueroa rushed at
9 Plaintiff, grabbed him by the throat, threw him to the ground,
10 and began punching him in the face. Id. ¶ 16. Officer Figueroa
11 and the other officers that arrived on scene handcuffed Plaintiff
12 and put him in the back of a patrol car. Id. ¶¶ 16, 17.
13 Plaintiff was transported to the Sacramento County Jail,² without
14 being offered or provided medical care for his injuries. Id.

15 At the jail, staff again failed to offer or provide care for
16 Plaintiff's injuries. Id. ¶ 19. Officers placed Plaintiff in an
17 isolation cell, where he was subsequently attacked by multiple
18 officers who forcibly stripped him of his clothes. Id. ¶¶ 20,
19 21. Plaintiff was humiliated and feared that the officers would
20 sexually assault him. Id. ¶¶ 23, 24. Plaintiff was released
21 around 2:00 a.m. and no charges were filed against him. Id.
22 ¶¶ 25, 26.

23 Plaintiff filed this lawsuit against Officer Figueroa,
24 unnamed officers and jail employees, the City of Sacramento, and
25 the County of Sacramento. He asserts a Fourth Amendment

26
27 ² This paragraph refers to Sacramento City Jail, but the
28 Complaint otherwise indicates Plaintiff was transported to the
County Jail.

1 excessive force claim against Officer Figueroa and unnamed
2 officers, and a Monell claim against the City, the County, and
3 other unnamed officers. With respect to the County, Plaintiff
4 alleges the following:

- 5 • "CITY/COUNTY . . . breached their duty of care to the
6 public in that they have failed to discipline
7 Defendants . . . for their respective misconduct and
8 involvement in the incident described herein. Their
9 failure . . . demonstrates the existence of an
10 entrenched culture, policy or practice of promoting,
11 tolerating, and/or ratifying with deliberate
12 indifference, the use of racial profiling, excessive
13 force and the fabrication of official reports to cover
14 up Defendants" misconduct. Compl. ¶ 27.
- 15 • "[A]s a matter of official policy—rooted in an
16 entrenched posture of deliberate indifference to the
17 constitutional rights of persons [in the] CITY/COUNTY
18 of SACRAMENTO, SPD/SSD has allowed persons to be abused
19 and racially profiled by its employees including
20 Defendants[.]" Id. ¶ 29.
- 21 • "SPD/SSD employees exhibit a pattern and practice of
22 using racial profiling and excessive force against
23 citizens and despite these incidents, none of the
24 employees are ever found in violation of department
25 policy, even under the most questionable of
26 circumstances. SPD/SSD's failure to discipline or
27 retrain any of the involved employees is evidence of an
28 official policy, entrenched culture and posture of

1 deliberate indifference toward protecting citizen's
2 rights and the resulting deaths and injuries is a
3 proximate result of SPD/SSD's failure to properly
4 supervise its employees and ratify their
5 unconstitutional conduct." Id. ¶ 31.

- 6 • "[H]igh ranking CITY/COUNTY officials . . . knew and/or
7 reasonably should have known about the repeated acts of
8 unconstitutional excessive force by SPD/SSD Officers
9 . . . [and] approved, ratified, condoned, encouraged,
10 sought to cover up, and/or tacitly authorized the
11 continuing pattern and practice of misconduct and/or
12 civil rights violations by SPD/SSD" that resulted in
13 Plaintiff's beating. "As a result of because of th[is]
14 deliberate indifference, reckless, and/or conscious
15 disregard of the misconduct by Defendants . . .
16 [CITY/COUNTY] ratified and encouraged these officers to
17 continue their course of misconduct." Id. ¶¶ 40-42.

18 The County seeks dismissal of the Monell claim asserted against
19 it. ECF No. 10.

20 II. OPINION

21 A. Motion to Dismiss

22 A government entity, like the County, cannot be held liable
23 under 42 U.S.C. § 1983 unless a plaintiff can show that the
24 entity's policy, practice, or custom was the moving force behind
25 the constitutional violation. Monell v. Dep't of Soc. Services
26 of the City of N.Y., 436 U.S. 658, 694 (1978). To establish a
27 Monell claim, "a plaintiff must prove (1) that [she] possessed a
28 constitutional right of which she was deprived; (2) that the

1 government entity had a policy; (3) that this policy amounts to
2 deliberate indifference to the plaintiff's constitutional right;
3 and, (4) that the policy is the moving force behind the
4 constitutional violation." Dougherty v. City of Covina, 654 F.3d
5 892, 900 (9th Cir. 2011) (citation omitted). In certain
6 circumstances, a failure to train, a failure to supervise, or a
7 failure to respond to repeated constitutional violations of which
8 an entity had notice may amount to a policy of deliberate
9 indifference. Id. (failure to train; failure to supervise);
10 Velazquez v. City of Long Beach, 793 F.3d 1010, 1027 (9th Cir.
11 2015) (failure to discharge or reprimand).

12 To survive a motion to dismiss, a complaint must contain
13 more than just labels and conclusions or a formulaic recitation
14 of the elements of a cause of action. Bell Atlantic Corp. v.
15 Twombly, 550 U.S. 544, 555 (2007). Historically, in order to
16 plead a Monell claim in the Ninth Circuit, a plaintiff need only
17 plead a "bare allegation that government officials'
18 [unconstitutional] conduct conformed to some unidentified" policy
19 or custom. AE ex rel. Hernandez v. Cnty. of Tulare, 666 F.3d
20 631, 637 (9th Cir. 2012). Following Iqbal/Twombly, however, the
21 Ninth Circuit held that Monell claims must also contain
22 sufficient allegations to give fair notice to the opposing party
23 and "must plausibly suggest an entitlement to relief, such that
24 it is not unfair to require the opposing party to be subjected to
25 the expense of discovery and continued litigation." Id. (quoting
26 Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011)).

27 The County argues that Plaintiff's Monell claim against it
28 should be dismissed because the Complaint "recites only 'labels

1 and conclusions' that are not entitled to the presumption of
2 truth, and therefore are insufficient to state a claim." Mot. to
3 Dismiss at 4. It further argues that Plaintiff only alleges a
4 single incident of unconstitutional activity, which cannot, by
5 itself, support a Monell claim.

6 To survive a motion to dismiss, a plaintiff must do more
7 than allege that a Monell defendant "maintained or permitted an
8 official policy, custom or practice of knowingly permitting the
9 occurrence of the type of wrongs" alleged elsewhere in the
10 complaint. AE ex rel. Hernandez, 666 F.3d at 637. Facts
11 regarding the specific nature of the alleged policy, custom, or
12 practice are required; merely stating the subject to which the
13 policy relates (i.e. excessive force) is insufficient. See id.
14 Following this rule, district courts have dismissed complaints
15 where a plaintiff alleged a single incident of unconstitutional
16 conduct as the basis for their Monell claim. See Wallace v. City
17 of Santa Rosa, No. C 12-6451 MMC, 2013 WL 4675354 (N.D. Cal. Aug.
18 30, 2013) (dismissing a Monell claim rooted in allegations of an
19 officer's use of excessive force during plaintiff's arrest,
20 finding that a single incident is insufficient to support a
21 Monell claim based on inadequate training or failure to
22 discipline). In contrast, where a complaint specifies the
23 content of the policies, customs, or practices giving rise to the
24 alleged constitutional injuries, courts have allowed the claim to
25 go forward. See Mateos-Sandoval v. Cnty. of Sonoma, 942 F. Supp.
26 890, 899-900 (N.D. Cal. 2013).

27 The Complaint in this case alleges a traumatic encounter
28 between Plaintiff and staff at the Sacramento County Jail.

1 Nevertheless, the allegations are insufficient to state a claim
2 against the County. The thrust of the allegations against the
3 County is that it allowed or promoted the type of excessive force
4 alleged elsewhere in the Complaint. See Compl. ¶¶ 27, 29, 31.
5 These allegations lack the specificity required to state a
6 plausible—not merely possible—claim for relief. See AE ex rel.
7 Hernandez, 666 F.3d at 637. The fact that Plaintiff collapses
8 his allegations against the City and the County into single
9 paragraphs further demonstrates the conclusory nature of the
10 pleadings.

11 Insofar as Plaintiff premises the Monell claim on the
12 County's failure to discipline the officers involved in the
13 alleged incident, the pleadings, again, lack sufficient facts.
14 Plaintiff is correct that—in certain circumstances and with
15 additional facts—the failure to discipline or reprimand officers
16 for unconstitutional conduct may support Monell liability. See
17 Velazquez, 793 F.3d at 1027 (“A custom or practice can be
18 inferred from evidence of repeated constitutional violations for
19 which the errant municipal officers were not discharged or
20 reprimanded.”); Henry v. Cnty. of Shasta, 132 F.3d 512 (9th Cir.
21 1997) (post-event evidence of identical incidents may show that a
22 municipality had notice of its agents' unconstitutional actions).
23 However, Plaintiff merely recites the elements that would support
24 such a claim without alleging any facts to cross the plausibility
25 threshold. Compl. ¶¶ 31, 40-44; see Bagley v. City of Sunnyvale,
26 No. 16-CV-02250-LHK, 2017 WL 344998, at *16 (N.D Cal. Jan. 24,
27 2017) (finding plaintiff's allegation that Sunnyvale has a policy
28 to cover up unconstitutional actions by failing to investigate

1 and discipline unconstitutional enforcement activity too vague to
2 support Monell liability under AE ex rel. Hernandez). These
3 allegations, too, are insufficient.

4 Furthermore, the Complaint does not plausibly allege a
5 Monell claim against the County based on inadequate training.
6 Plaintiff has not provided any facts or explanation as to how the
7 County's officer training is inadequate. See Canas v. City of
8 Sunnyvale, No. C 08-5771 JF (PSG), 2011 WL 1743910, at *6 (N.D.
9 Cal. Jan. 19, 2011) ("[Plaintiffs'] Monell allegations still are
10 conclusory in nature. Other than alleging that the officers' EMT
11 training was inadequate [to] enable them to assist the Decedent
12 after he was shot, Plaintiffs do not explain in detail how the
13 City's alleged policies or customs are deficient."). Summarily
14 stating that Defendants "were on notice of the Constitutional
15 defects in their training of SPD/SSD police officers, including,
16 but not limited to unlawfully using excessive force to make
17 detentions and/or arrests" is plainly insufficient. Compl. ¶ 43.

18 Although Plaintiff incorporates some *elements* of various
19 Monell theories in his allegations, Plaintiff has failed to
20 allege *facts* supporting a plausible claim for relief.
21 Accordingly, the claim must be dismissed.

22 B. Motion to Compel

23 In the final section of its Opposition, Plaintiff inserts a
24 request for the Court to compel the County to provide names of
25 jail employees. This request is not properly before the Court
26 and is thus denied.

27 ///

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

III. ORDER

For the reasons set forth above, the Court GRANTS County's Motion to Dismiss the Monell claim asserted against it. The Court grants Plaintiff leave to amend *only* the claim against the County which was the subject of the Motion to Dismiss. Plaintiff's amended complaint must be filed within twenty days from the date of this Order. The County's responsive pleading is due within twenty days thereafter. If Plaintiff chooses not to amend the Complaint, the case will proceed on the remaining claims and the County will be dismissed from this action.

IT IS SO ORDERED.

Dated: October 3, 2017



JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE