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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES ELLIS JOHNSON,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. [13-cv-02405-JD](#)

ORDER GRANTING IN PART AND DENYING IN PART UNITED STATES' MOTION TO DISMISS AND GRANTING CITY AND COUNTY OF SAN FRANCISCO'S MOTION TO DISMISS

Re: Dkt. Nos. 86, 88

INTRODUCTION

Pro se Plaintiff James Ellis Johnson is a United States veteran who receives medical care at the San Francisco Veterans Affairs Medical Center (“SFVAMC”). Plaintiff alleged in the original complaint in this case that he suffered serious physical injuries and emotional distress at the hands of the VA police during an incident in January 2012, and that deputy sheriffs of the City and County of San Francisco (“CCSF”) stood by without intervening. Dkt. No. 1. Defendants United States of America and CCSF challenged the sufficiency of the original complaint in motions to dismiss. On December 11, 2103, this Court granted in part and denied in part the United States’ motion to dismiss, and granted CCSF’s motion to dismiss. Dkt. No. 75. The Court granted Plaintiff leave to amend certain claims and provided guidance to Plaintiff on amending the complaint.

On January 23, 2014, Plaintiff filed an Amended Complaint, which added several new claims against the United States and CCSF. Dkt. No. 83. Defendants moved to dismiss the Amended Complaint. Dkt. Nos. 86, 88. The Court heard oral argument on these motions on May 28, 2014, and now grants in part and denies in part the United States’ motion to dismiss, and grants CCSF’s motion to dismiss in its entirety.

1 (4) violations of California Penal Code §§ 145 and 147.¹ The Amended Complaint alleges claims
2 against Defendant CCSF for: (1) assault; (2) battery; (3) failure to intervene; (4) IIED; (5)
3 violations of California Penal Code §§ 142, 145, 147, 836, 840, 849, and 4006; and (6) false
4 imprisonment. *Id.* at 13-14, 16.² Plaintiff seeks damages from the United States for personal
5 injury in the amount of \$2,075,000, and injunctive relief ordering removal of the behavioral flag
6 and restriction from the VA national computer. *Id.* at 15. Plaintiff also seeks damages from
7 CCSF for personal injury in the amount of \$500,000 and payment of 20% of all medical costs. *Id.*
8 at 15-16.

9 DISCUSSION

10 I. LEGAL STANDARD

11 Defendants move to dismiss the Amended Complaint under Federal Rules of Civil
12 Procedure 12(b)(1) and 12(b)(6). Under Rule 12(b)(1), a party may move to dismiss for lack of
13 subject matter jurisdiction. A district court may lack jurisdiction under a statutory scheme created
14 by Congress that confers jurisdiction over certain veteran’s benefits claims to specific federal
15 courts and denies jurisdiction over those claims to all other federal courts. *See Veterans for*
16 *Common Sense v. Shinseki*, 678 F.3d 1013, 1019-20 (9th Cir. 2012). It may also lack jurisdiction
17 over certain tort claims if the plaintiff has failed to exhaust administrative remedies. *See* 28
18 U.S.C. § 2675.

19 Under Rule 12(b)(6), a party may move to dismiss based on the failure to state a claim
20 upon which relief may be granted. “To survive a motion to dismiss, a complaint must contain
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22 ¹ The Amended Complaint also makes reference to Plaintiff being “set up” and alleges that his
23 arrest “was planned” to “undermine a federal trial” and “cause Mr. Johnson to lose Case
24 #106472LB.” Dkt. No. 83 at 7, 8, 10, 14. Plaintiff’s allegations about “undermin[ing] a federal
25 trial” relate to a medical malpractice case against the United States that was pending at the time of
26 Plaintiff’s arrest, Case No. 3:10-cv-00647. Plaintiff appears to contend that his arrest on January
27 30, 2012 was orchestrated to derail his ability to file summary judgment briefs due on February 9,
28 2012. *Id.*; Case No. 10-00647, Dkt. No. 111. But Plaintiff has not alleged a claim for this
purported event, and does not appear to tie any of his stated claims to it. *See* Dkt. No. 1, Ex. 1 at
8. In addition, the Court notes that Plaintiff was granted two extensions of time to file his
summary judgment briefing. *See* Case No. 10-00647, Dkt. Nos. 114, 125.

² The Amended Complaint also alleges claims against individual federal and CCSF Defendants,
but as discussed below, Plaintiff stated that he is no longer pursuing any claims against individual
defendants, only the United States and the CCSF. *See infra* Sections II.B and III.A.

1 sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’”
2 *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl.*
3 *Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). At a minimum, a
4 plaintiff must provide “the ‘grounds’ of his ‘entitle[ment] to relief’ [which] requires more than
5 labels and conclusions, and a formulaic recitation of the elements of a cause of action.” *Id.* To
6 ensure that pro se litigants like Plaintiff do not lose their right to a hearing on the merits over a
7 technical procedural requirement, the Court construes pro se pleadings liberally and, particularly
8 in the civil rights context, affords pro se plaintiffs “the benefit of any doubt.” *Hebbe v. Pliler*, 627
9 F.3d 338, 342 (9th Cir. 2010) (citation omitted).

10 But Plaintiff is still required to satisfy Federal Rule of Civil Procedure 8(a). This rule
11 requires “‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in
12 order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it
13 rests.’” *Twombly*, 550 U.S. at 555 (quoting *Conley v. Gibson*, 355 U.S. 41, 47, 78 S.Ct. 99, 2
14 L.Ed.2d 80 (1957)).

15 **II. UNITED STATES’ MOTION TO DISMISS**

16 **A. The OBR Injunction**

17 The Court’s prior order dismissed with prejudice all but one of Plaintiff’s claims
18 pertaining to the OBR and related behavioral flag. The Court dismissed without prejudice
19 Plaintiff’s claim for injunctive relief to have the behavioral flag removed. The Court dismissed
20 that claim because Plaintiff had not yet exhausted his administrative remedies with the VA. Dkt.
21 No. 75 at 17.

22 The VA entered the OBR and a related behavioral flag for allegedly aggressive conduct by
23 Plaintiff during visits for medical care. The OBR was entered in August 2011 and extended in late
24 2013 to November 2015. *See* Dkt. No. 87 at 7-8. Plaintiff filed a timely administrative appeal of
25 the OBR and behavioral flag on December 19, 2013. *Id.* at 10-13. The United States contends
26 that Plaintiff’s appeal will be decided by an appellate group at the SFVAMC by June 1, 2013, and
27 will be sent to the Network Director for final action in accordance with the governing Department
28

1 of Veterans Affairs Regulations, 38 C.F.R. § 17.107(e). *See id.* at 1. Plaintiff will be notified of
2 the outcome of the appeal by no later than July 1, 2014. *Id.* at 2.

3 The United States asserts that because Plaintiff’s appeal of the OBR is still pending,
4 Plaintiff has not fully exhausted his administrative remedies, and Plaintiff’s claim for injunctive
5 relief should be dismissed. Dkt. No. 86 at 5. Plaintiff contends that the VA’s previous denial of
6 similar appeals in 1995, 2006, and 2007, combined with the delay in adjudicating his current
7 appeal, is sufficient for this Court to find that Plaintiff has exhausted his administrative remedies.
8 Dkt. Nos. 83 at 3; 95 at 1. The Court construes Plaintiff’s argument as invoking the futility
9 exception to overcome the exhaustion requirement.

10 A party must exhaust its remedies before it can obtain judicial review of an agency
11 decision. *See United Farm Workers of Am., AFL-CIO v. Arizona Agric. Emp’t Relations Bd.*, 669
12 F.2d 1249, 1253 (9th Cir. 1982). The exhaustion doctrine allows administrative agencies to
13 exercise their expertise and correct any agency mistakes that may have occurred in order to avoid
14 unnecessary judicial intervention into the administrative process. *Id.* (citing *Weinberger v. Salfi*,
15 422 U.S. 749, 765, 95 S.Ct. 2457, 2466, 45 L.Ed.2d 522 (1975)). But exhaustion of administrative
16 remedies is not required “where the remedies are inadequate, inefficacious, or futile, where pursuit
17 of them would irreparably injure the plaintiff, or where the administrative proceedings themselves
18 are void.” *Id.* (citing *Aleknagik Natives Ltd. v. Andrus*, 648 F.2d 496, 499-500 (9th Cir. 1980)).
19 Where, as here, the exhaustion of administrative remedies is not specifically required by statute,
20 application of the exhaustion doctrine is within the sound discretion of the district court. *Id.*

21 Based on the VA’s representations, the review process is almost done. Counsel for the
22 United States said at the hearing, and the SFVAMC Medical Center Director also averred in a
23 declaration, that SFVAMC has initiated an independent, *de novo* investigation and review of the
24 appeal and the VA Disruptive Behavior Committee file, and that the appellate group “will
25 consist of VA health and safety professionals who have not participated in any prior reviews or
26 decisions concerning plaintiff’s behavioral restrictions.” Dkt. No. 87 at 2. The appellate review is
27 expected to be complete by June 1, 2014, and Plaintiff will be notified of the final decision of his
28 appeal by July 1, 2014. *Id.*

1 Consequently, while the Court is sympathetic to Plaintiff’s frustration that the review
2 process has dragged on for more than six months, the Court finds that the futility exception does
3 not apply to save this claim. The United States represented that the appeal is being carefully and
4 thoroughly reviewed, and will be decided imminently. The Court dismisses the OBR claim on
5 grounds of failure to exhaust. But the dismissal is without prejudice, and Plaintiff may re-allege
6 this claim if, after the VA’s decision, he believes there is a sound basis to do so.

7 **B. Individual Federal Defendants**

8 The United States also challenges Plaintiff’s references to individual defendants in
9 the Amended Complaint. The Amended Complaint states that “[t]here are five Defendant Federal
10 Police” and names the federal officers. Dkt. No. 83 at 9. But Plaintiff repeatedly told the Court
11 that he does not wish to pursue claims against any individuals. In his opposition to the United
12 States’ motion to dismiss and during the hearing on this motion, Plaintiff insisted that he is not
13 alleging any claims against individuals, only against the United States. *See* Dkt. No. 95 at 10
14 (“There are no individual Federal defendants being sued There is no *Bivens* claim here.”).
15 Thus, the Court dismisses with prejudice any claims asserted in the Amended Complaint against
16 the named individual federal Defendants.

17 **C. New Claims in Amended Complaint**

18 The United States seeks an order “dismissing all claims against all federal defendants
19 set forth in [P]laintiff’s amended complaint, *except for the four state law tort claims against*
20 *defendant United States specifically authorized by this Court in its December 11, 2013, Order . . .*”
21 Dkt. No. 86 at 1 (emphasis in original). Those claims will go forward, and the Court will discuss
22 here the four new claims against the United States for: (1) malicious prosecution; (2) excessive
23 force; (3) failure to intervene; and (4) violations of Cal. Penal Code §§ 145 and 147. Dkt. No. 83
24 at 5-6.

25 **i. Malicious Prosecution**

26 Plaintiff asserts that the United States maliciously prosecuted him. *See* Dkt.
27 No. 83 at 5. To state a claim for malicious prosecution under California law, a plaintiff must
28 allege “that [a] prior action (1) was commenced by or at the direction of the defendant and was

1 pursued to a legal termination favorable to the plaintiff; (2) was brought without probable cause;
2 and (3) was initiated with malice.” *Soukup v. Law Offices of Herbert Hafif*, 39 Cal.4th 260, 292
3 (Cal. 2006).

4 The United States contends that Plaintiff has failed to allege facts sufficient to support a
5 malicious prosecution claim. Dkt. No. 86 at 10. The Court agrees. The tort of malicious
6 prosecution is necessarily predicated on a prior lawsuit commenced “at the direction of the
7 defendant and [] pursued to a legal termination.” *Soukup*, 39 Cal.4th at 292. Here, Defendant
8 United States did not commence a legal proceeding, much less pursue any such proceeding to a
9 legal termination. Plaintiff concedes he was released within hours of arrest and that no charges
10 were filed against him. *See* Dkt. No. 83 at 8. Accordingly, Plaintiff has failed to state a claim for
11 malicious prosecution. Because it is clear that no amendment to the complaint can cure this
12 deficiency, this claim is dismissed with prejudice.

13 **ii. Excessive Force**

14 Plaintiff alleges that the VA officers used excessive force when arresting him at
15 SFVAMC. Plaintiff contends that, among other things, “[t]he police manhandled Plaintiff” and
16 caused him “great pain” by using a lock hold and handcuffing Plaintiff even though he “told them
17 he had a complete rotator cuff tear” in his shoulder. Dkt. No. 83 at 7.

18 The Court’s prior order found that these and other allegations of mistreatment sufficiently
19 allege assault and battery. *See* Dkt. No. 75 at 10. But the Court expressly held that “[t]o the
20 extent Plaintiff seeks to allege a constitutional violation under the Fourth Amendment for use of
21 excessive force, sovereign immunity bars suits for damages against the United States for Fourth
22 Amendment violations by its officers.” *Id.* at 11 (citing *Arnsberg v. U.S.*, 757 F.2d 971, 980 (9th
23 Cir. 1985)). Consistent with its prior order, this Court finds that Plaintiff has not stated a Fourth
24 Amendment claim against the United States and now dismisses this claim with prejudice.

25 **iii. Failure to Intervene**

26 Plaintiff alleges that certain VA officers failed to intervene when he was being
27 assaulted in a holding cell, in the back of the police car, and when Plaintiff was placed in a chair
28 and delayed entry into the jail. Dkt. No. 83 at 6. As detailed above, Plaintiff has expressly stated

1 that he is not pursuing any claims against any federal individual defendants. Consequently, this
2 Fourth Amendment claim against the United States for alleged violations by its officers is barred
3 by sovereign immunity. *See Arnsberg*, 757 F.2d at 980. Because it is clear that no amendment to
4 the complaint can cure this deficiency, this claim is dismissed with prejudice.

5 **iv. California Penal Code Violations**

6 Plaintiff's fourth and fifth claims are for violations of Cal. Penal Code §§ 145
7 and 147. These claims were addressed in the prior order. To the extent Plaintiff seeks injunctive
8 relief for them, the Court holds again that it does not have authority to order that relief; the
9 decision to file criminal charges is solely within the authority of prosecutors, not the Court. *See*
10 Dkt. No. 75 at 10. To the extent Plaintiff seeks damages for these claims, the Court again
11 construes them as assault and battery claims that are allowed to go forward. *See id.* The Court
12 notes, however, that its previous order specifically stated that if Plaintiff "bases a cause of action
13 on a Penal Code provision, he should also state the basis of a private right of action." *Id.* at 21.
14 Plaintiff has failed to state the basis of a private right of action for these claims, and so to the
15 extent that Plaintiff is attempting to allege more than assault and battery with respect to these
16 claims, they are dismissed with prejudice.

17 **III. CCSF'S MOTION TO DISMISS**

18 **A. Individual CCSF Defendants**

19 Plaintiff's express abandonment of claims against the individual defendants also
20 included any claims against individual CCSF defendants. During the hearing, Plaintiff
21 emphasized that he is suing only CCSF itself. Accordingly, the claims against individual
22 unidentified sheriff's deputies, the Mayor, and the Sheriff of the CCSF are dismissed with
23 prejudice.

24 **B. Claims Against CCSF in Amended Complaint**

25 **i. Assault & Battery**

26 In the prior order, the Court found that Plaintiff failed to state a claim against
27 CCSF for assault or battery because he failed to allege sufficient facts to support those claims.
28 Dkt. No. 75 at 19. The Amended Complaint suffers from the same defect. The CCSF assault and

1 battery allegations consist solely of the allegations that: (1) Plaintiff was injured “in the presence
2 of city employees who took no action to stop the assault, therefore becoming part of the assault;”
3 (2) “the Sheriffs (Sheriff #1 and Sheriff #2, a white female) are guilty of battery. Plaintiff was
4 being assaulted, a victim of assault and battery by means of a device;” and (3) Sheriff #1’s “role in
5 the assault and battery” was his delay “in taking Plaintiff inside the jail from the parking lot
6 behind the jail.” Dkt. No. 83 at 11-12.

7 These allegations are again too thin to sustain assault and battery claims. Assault requires
8 that a “defendant acted with intent to cause harmful or offensive contact, or threatened to touch
9 plaintiff in a harmful or offensive manner,” and that as a result, the plaintiff was harmed. *So v.*
10 *Shin*, 212 Cal.App.4th 652, 668-69 (Cal. App. 2013). Battery requires that a “defendant touched
11 plaintiff, or caused plaintiff to be touched, with the intent to harm or offend plaintiff,” and that
12 plaintiff “was harmed or offended by defendant’s conduct.” *Id.*

13 Plaintiff does not allege that any of the unnamed sheriff’s deputies threatened to touch him
14 or physically touched him in any way. Plaintiff’s allegations state that he was only touched by the
15 handcuffs that were put on by the VA officers. Plaintiff does not state facts to support a claim of
16 assault or battery by any of the unnamed sheriff’s deputies, and accordingly, this claim is
17 dismissed with prejudice.³

18 **ii. Failure to Intervene**

19 The Court’s prior order permitted Plaintiff leave to amend to allege a violation
20 of the Fourth Amendment for failure to intervene. *See* Dkt. No. 75 at 21. Because Plaintiff is not
21 pursuing claims against any individual CCSF Defendants, he alleges a violation of the Fourth
22 Amendment for failure to intervene against CCSF itself.

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25 ³ In his Opposition to CCSF’s Motion to Dismiss, Plaintiff contends for the first time that one of
26 the sheriff’s deputies told Plaintiff “I don’t care” in a threatening way. Dkt. No. 97 at 10. Plaintiff
27 was informed in the Court’s prior order that he must not allege new facts in his opposition brief,
28 but rather must include all factual allegations in the Amended Complaint. *See* Dkt. No. 75 at 21.
The Court will not consider this fact, or any other new facts included in Plaintiff’s opposition
briefing. *See Schneider v. Cal. Dept. of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (“In
determining the propriety of a Rule 12(b)(6) dismissal, a court may not look beyond the complaint
to a plaintiff’s moving papers, such as a memorandum in opposition to a defendant’s motion to
dismiss.”) (citation omitted).

1 As a local government, CCSF cannot be held liable for a constitutional violation by an
2 employee under Section 1983 unless the violation was committed in the execution of a CCSF
3 “policy or custom.” *See Monell v. Dep’t of Soc. Serv. of New York*, 436 U.S. 658, 694, 98 S.Ct.
4 2018 (1958). A *Monell* plaintiff must show “a direct causal link between a municipal policy or
5 custom and the alleged constitutional deprivation.” *City of Canton v. Harris*, 489 U.S. 378, 385,
6 109 S.Ct. 1197, 103 L.Ed.2d 412 (1989). To succeed on this claim, Plaintiff must allege and
7 prove that a CCSF policy was the “moving force” behind the alleged violations. *See Bd. of Cnty.*
8 *Comm’rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 404, 117 S.Ct. 1382, 137 L.Ed.2d 626 (1997).
9 Plaintiff may make this showing in one of three ways: (1) “prove that a city employee committed
10 the alleged constitutional violation pursuant to a formal governmental policy or longstanding
11 practice or custom which constitutes the standard operating procedure of the local governmental
12 entity;” (2) “establish that the individual who committed the constitutional tort was an official
13 with final policy-making authority and that the challenged action itself thus constituted an act of
14 official government policy;” or (3) “prove than an official with final policy-making authority
15 ratified a subordinate’s unconstitutional decision or action and the basis for it.” *Trevino v. Gates*,
16 99 F.3d 911, 918 (9th Cir. 1996) (citing *Gillette v. Delmore*, 979 F.2d 1342, 1346-47 (9th Cir.
17 1992).

18 Plaintiff appears to allege that the CCSF policy or custom at issue is found in Cal. Penal
19 Code §§ 849, 142, 145, 147, 836, 840 and 4006. Dkt. No. 83 at 14. Plaintiff, however, does not
20 plead any facts about how these penal code sections relate to a CCSF policy or custom, or show “a
21 direct causal link between a municipal policy or custom and the alleged constitutional
22 deprivation.” *City of Canton*, 489 U.S. at 385. The Amended Complaint also does not identify
23 any individual vested with policy-making authority responsible for the decision to violate
24 Plaintiff’s constitutional rights, or allege any specific facts showing that an individual with final-
25 policy making authority ratified any unconstitutional conduct. Plaintiff only alleges that unnamed
26 sheriff’s deputies were involved in the alleged violations of Plaintiff’s constitutional rights. *See*
27 Dkt. No. 83. Without more, the Amended Complaint does not plausibly demonstrate a CCSF
28 policy or custom condoning the constitutional violations alleged, or that the Sheriff -- or any other

1 individuals vested with policy-making authority -- knew enough about the arrest to have been
2 alerted to the possibility that officers were engaging in unconstitutional conduct. Because Plaintiff
3 has already been given leave to amend this claim, it is dismissed with prejudice.

4 **iii. Intentional Infliction of Emotional Distress**

5 The Court previously determined that Plaintiff failed to state a claim for IIED
6 against the CCSF because it was allegedly a VA officer -- not a Deputy Sheriff -- who humiliated
7 Plaintiff. The Court's prior order noted that, at most, the Sheriff failed to intervene in the process
8 of taking a booking photo, and that this alleged inaction did not constitute "extreme and
9 outrageous conduct." Dkt. No. 75 at 19. In the Amended Complaint, Plaintiff alleges that
10 unnamed sheriff's deputies knowingly allowed Plaintiff to suffer, willfully delayed taking him into
11 custody knowingly prolonging his suffering, failed to intervene "allowing others to cause Plaintiff
12 to suffer" and "not caring that Plaintiff was suffering," and also re-alleges that the deputies
13 allowed a VA officer police humiliate him. Dkt. No. 83 at 12-16.

14 Plaintiff's Amended Complaint again fails to allege sufficient facts to support an IIED
15 claim. The gist of Plaintiff's IIED allegations -- similar to his previous complaint -- is that
16 unnamed sheriff's deputies failed to intervene even though they knew he was in pain and was
17 being humiliated by the VA officer. This failure to act does not rise to the level of extreme and
18 outrageous conduct. *See Davidson v. City of Westminster*, 32 Cal.3d 197, 210 (Cal. 1982)
19 (dismissing IIED claim where Plaintiff had "not alleged that the officers acted (or failed to act) as
20 they did for the purpose of causing emotional injury" and where "the officers' conduct did not rise
21 to the level of outrageous conduct so extreme as to exceed all bounds of that usually tolerated in a
22 civilized community") (internal citation omitted). On the facts alleged in Plaintiff's Amended
23 Complaint, he cannot establish an IIED claim. Because Plaintiff has already had an opportunity to
24 amend this claim, it is dismissed with prejudice.

25 **iv. California Penal Code Violations**

26 Plaintiff also alleges that Defendant CCSF violated Cal. Penal Code §§ 849,
27 142, 145, 147, 836, 840 and 4006. To the extent Plaintiff seeks injunctive relief for these alleged
28 violations, the Court previously held that it does not have authority to order injunctive relief. *See*

1 Dkt. No. 75 at 10. To the extent Plaintiff seeks damages for these alleged violations, Plaintiff has
2 failed to state a private right of action for any of these alleged violations that would serve as the
3 basis for a claim for damages, in violation of this Court’s prior order. *See Allen*, 464 F.3d at 1048.
4 Accordingly, these claims are dismissed with prejudice.

5 **v. False Imprisonment**

6 The Court’s previous order gave Plaintiff leave to amend the false
7 imprisonment claim. Plaintiff now alleges that: (1) “Defendant Sheriff #1 made it clear that he did
8 not care one way or the other why Plaintiff was arrested;” (2) “the sheriff knew Plaintiff was
9 coming. This was planned;” and (3) the “Defendant Sheriffs knew the Plaintiff’s arrest was false.”
10 Dkt. No. 83 at 11, 13.

11 False imprisonment under California law requires: “(1) the nonconsensual, intentional
12 confinement of a person, (2) without lawful privilege, and (3) for an appreciable period of time.”
13 *Blaxland v. Commonwealth Director of Public Prosecut.*, 323 F.3d 1198, 1205 (9th Cir. 2003)
14 (citing *Easton v. Sutter Coast Hosp.*, 80 Cal.App.4th 485, 496 (Cal. App. 2000)). “A cause of
15 action for false imprisonment based on unlawful arrest will lie where there was an arrest without
16 process followed by imprisonment.” *Watts v. County of Sacramento*, 256 F.3d 886, 891 (9th Cir.
17 2001) (citing *City of Newport Beach v. Sasse*, 9 Cal.App.3d 803, 810 (Cal. App. 1970)).

18 Plaintiff’s allegations do not support a false imprisonment claim. Plaintiff’s only non-
19 conclusory allegation that any sheriff’s deputy had reason to believe his arrest was unlawful is the
20 allegation that one of the unnamed deputies was told by one of the VA officers that the arrest “was
21 planned.” Dkt. No. 83 at 13. This allegation, however, is not sufficient to demonstrate that any
22 sheriff’s deputy lacked reasonable cause to believe that Plaintiff’s arrest was lawful. Moreover,
23 the Court is not persuaded that the alleged apathy of one of the deputies to the reasons for
24 Plaintiff’s arrest is sufficient to plead that the deputy knew Plaintiff’s arrest was “false.”
25 Accordingly, this claim is dismissed with prejudice.

26 **CONCLUSION**

27 The following state law claims against the United States are sufficient to survive review at
28 the pleading stage and will go forward: assault, battery, false imprisonment, and intentional

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infliction of emotional distress.

The OBR and behavioral flag injunction claim is dismissed without prejudice subject to renewed pleading after the VA completes the administrative review. The remaining claims in the Amended Complaint are dismissed with prejudice. If Plaintiff elects to file a second amended complaint, Plaintiff may not allege any new claims without prior leave of this Court.

IT IS SO ORDERED.

Dated: June 12, 2014



JAMES DONATO
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES ELLIS JOHNSON,
Plaintiff,
v.
UNITED STATES OF AMERICA, et al.,
Defendants.

Case No. [13-cv-02405-JD](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 6/12/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Ellis Johnson
1819 Golden Gate Avenue, #12
San Francisco, CA 94115

Dated: 6/12/2014

Richard W. Wieking
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO