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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OSMAN YOUSIF,

No. C 15-04887 WHA

Plaintiff,

v.

**ORDER RE MOTIONS
TO DISMISS**

COUNTY OF SAN MATEO; SHERIFF
GREG MUNKS; DEPUTY CHRIS
LOUBAL; DEPUTY DEFRANCE
MCLEMORE; CITY OF MENLO PARK;
OFFICER CHRIS ADAIR,

Defendants.

_____ /

INTRODUCTION

In this Section 1983 action, plaintiff, represented by counsel, has alleged local police officers violated his constitutional rights. Defendants have filed two separate motions to dismiss under Rule 12(b)(6). For the reasons stated below, the motions to dismiss are

GRANTED IN PART AND DENIED IN PART.

STATEMENT

The following well-pled facts are assumed to be true for the purposes of the present motions. Plaintiff Osman Yousif, who is “brown-skinned,” has had over seventy interactions with law enforcement over the last eight years. Plaintiff’s complaint describes six specific interactions which form the basis for the constitutional violations alleged herein, and which are quoted from the complaint below (Compl. ¶¶ 22–28):

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- (1) In August 2014, defendant [Officer Chris] Adair stopped Yousif in Menlo Park for ostensibly failing to stop at a stop sign. Yousif requested that the interaction take place out of the street because he felt unsafe. Plaintiff, not on parole or probation, refused Adair’s demand to search. Adair then grabbed Yousif, and insisted that Yousif was drunk in public. Adair then arrested Yousif for being in possession of narcotics; the narcotic was a lawful prescription of hydrocodone. The case was dismissed.
- (2) On November 1, 2014, Adair had a similar interaction with Yousif, again in Menlo Park. Adair decided to arrest Yousif in about 45 seconds. Adair knew, and acknowledged at a hearing, that Yousif did not reside in Menlo Park, and this was a primary basis of the decision to arrest. Again, he did not perform a field sobriety test or any field test for intoxication. This case was also dismissed.
- (3) On September 28, 2014, Yousif was stopped near his home in Half Moon Bay by [defendant Deputy Chris] Laughlin. In connection with this traffic stop (Yousif was again on bicycle), Laughlin called to the scene an additional four-five deputies, one of whom was [defendant Deputy Chris] Loubal. Loubal and other deputies threatened Yousif with physical harm if Yousif did not stop verbally protesting the police action.
- (4) On October 22, 2014, Yousif was assisting a friend with pouring fuel (gasoline) into a vehicle. Despite frequent interactions with Yousif up to this point in time, Laughlin demanded Yousif produce identification. When Yousif asked if he was detained, Laughlin roughly placed handcuffs on Yousif and placed Yousif in Laughlin’s SMSO patrol car.
- (5) Later 2014 or early 2015, Laughlin dragged Yousif out of a 7-11, for no reason, without cause. No case was filed.
- (6) On September 15, 2015, defendant [Deputy DeFrance] McLemore physically attacked Yousif. McLemore slammed Yousif to the ground, threatened Yousif with a taser, and placed Yousif on a 72-hour hold. With McLemore was Loubal. Yousif was known and identified by Loubal and others, and these deputies noted Yousif was a person who had frequent police contacts.

In addition, the complaint alleges that plaintiff’s mother met with defendant Sheriff Greg Munks to complain “about the frequent harassment, detentions, and arrests of her son” (*id.* at ¶ 18).

Now, defendants County of San Mateo, Sheriff Munks, Deputy Loubal, Deputy Laughlin, and Deputy McLemore have filed a motion to dismiss. Defendants City of Menlo Park and Officer Adair have filed a separate motion to dismiss. This order follows full briefing and oral argument.

1 ANALYSIS

2 To survive a motion to dismiss, a complaint must contain sufficient factual matter,
3 accepted as true, to state a claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556
4 U.S. 662, 678 (2009). A claim is facially plausible when there are sufficient factual allegations
5 to draw a reasonable inference that the defendant is liable for the conduct alleged. While a
6 court “must take all of the factual allegations in the complaint as true,” it is “not bound to
7 accept as true a legal conclusion couched as a factual allegation.” *Id.* at 678–79 (quoting *Bell*
8 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (internal quotation omitted).

9 To state a claim under Section 1983, a plaintiff must allege two essential elements:
10 (1) that a right secured by the Constitution or laws of the United States was violated, and
11 (2) that the alleged deprivation was committed by a person acting under the color of state law.
12 *West v. Atkins*, 487 U.S. 42, 48 (1988). “Vague and conclusory allegations of official
13 participation in civil rights violations are not sufficient to withstand a motion to dismiss.” *Ivey*
14 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

15 Plaintiff’s complaint alleges a laundry list of constitutional violations, without tying any
16 of them to the above quoted factual allegations. Rather, plaintiff simply lists violations of the
17 following rights (Compl. at ¶ 31): (a) “unreasonable search and seizure,” (b)
18 “excessive/unnecessary use of force,” (c) “deprivation of Due Process,” (d) “pre-trial
19 punishment,” (e) “Equal Protection of the Law,” and (f) to engage in “protected activity.”

20 Of the six police interactions described in the complaint and quoted above, only incident
21 (6) states a plausible Section 1983 claim. Incident (6) alleges that San Mateo Deputies
22 McLemore and Loubal “physically attacked Yousif . . . slammed Yousif to the ground,
23 threatened Yousif with a taser, and placed Yousif on a 72-hour hold” (Compl. at ¶ 28). This
24 allegation, on its face, is sufficient to state a plausible claim for excessive force and
25 unreasonable seizure against defendant Deputies McLemore and Loubal. These defendants
26 argue that they are entitled to immunity based on their “Section 5150” hold of plaintiff. Based
27 on the allegations pled within the four corners of the complaint, however, it is plausible that the
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1 officers would not be entitled to immunity. It is better to address the immunity issue at the
2 summary judgment stage, on a full evidentiary record.

3 The other five incidents, as currently pled, are insufficient to state a claim.

4 “Determining whether the force used to effect a particular seizure is reasonable under the
5 Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the
6 individual’s Fourth Amendment interests against the countervailing governmental interests at
7 stake.” *Graham v. Conner*, 490 U.S. 386, 396 (1989). “With respect to a claim of excessive
8 force, the same standard of reasonableness at the moment applies: Not every push or shove,
9 even if it may later seem unnecessary in the peace of a judge’s chambers, violates the Fourth
10 Amendment.” *Ibid* (internal citation omitted).

11 Incident (1) alleges that Officer Adair arrested plaintiff for running a stop sign, then
12 “grabbed Yousif, and insisted that Yousif was drunk in public. Adair then arrested Yousif for
13 being in possession of narcotics; the narcotic was a lawful prescription of hydrocodone”
14 (Compl. at ¶ 28). This allegation is simply too vague to state a civil rights violation. Plaintiff
15 concedes that he ran a stop sign (the complaint does not specify whether plaintiff was on a bike
16 or driving a car during this incident) and thus Officer Adair arrested him. The allegation that
17 Officer Adair “grabbed” plaintiff, without any more description of the circumstances or the
18 force used, is insufficient to state any plausible claim.

19 Incident (2) alleges that Officer “Adair decided to arrest Yousif in about 45 seconds . . .
20 [and] did not perform a field sobriety test or any field test for intoxication” (*id.* at ¶ 23).
21 Similarly, the allegation that Officer Adair made a quick arrest — even though 45 seconds
22 could be a long time depending on the circumstances — without conducting a field sobriety is
23 too vague, on its own, to state a plausible claim.

24 Incident (3) alleges that Deputies Laughlin and Loubal arrested plaintiff for a traffic stop
25 and “threatened Yousif with physical harm if Yousif did not stop verbally protesting the police
26 action” (*id.* at ¶ 24). On its face, this allegation suggests lawful police action, as verbal
27 warnings frequently accompany arrests. This allegation does not allege excessive, or even any,
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1 physical force was used against plaintiff. Accordingly, Incident (3), as currently pled, does not
2 state a plausible civil rights violation.

3 Incident (4) describes an encounter in which Deputy Laughlin approached plaintiff
4 while he was pouring gasoline into a car. Deputy Laughlin then “demanded Yousif produce
5 identification. When Yousif asked if he was detained, Laughlin roughly placed handcuffs on
6 Yousif and placed Yousif in Laughlin’s SMSO patrol car” (*id.* at ¶ 26). Once again, this
7 allegation is simply too vague. Merely stating that a police officer “roughly placed handcuffs”
8 on someone does not rise to the level of excessive force. Plaintiff must plead facts detailing the
9 scenario and stating how and why the officer’s actions were unreasonable and excessive.

10 Incident (5) alleges that Deputy “Laughlin dragged Yousif out of a 7-11, for no reason,
11 without cause” (*id.* at ¶ 27). Without more context, and without a more detailed description of
12 the dragging and why it might be unreasonable, this allegation is insufficient to state a claim. If
13 plaintiff seeks leave to amend these claims, he must set the scene and allege more detail such
14 that his civil rights claims rise to the level of being plausible.

15 Lastly, plaintiff has also asserted claims against the City of Menlo Park and the County
16 of San Mateo. In *Monell v. Department of Social Services*, 436 U.S. 658 (1978) the Supreme
17 Court established that local governments can be held liable for Section 1983 violations. In
18 interpreting *Monell*, our court of appeals has held that there are three viable theories for
19 municipal liability based on constitutional violations under Section 1983.

20 First, a local government may be held liable when implementation
21 of its official policies or established customs inflicts the
22 constitutional injury. . . . Second, under certain circumstances, a
23 local government may be held liable under [Section] 1983 for acts
24 of “omission,” when such omissions amount to the local
25 government’s own official policy. . . . Third, a local government
26 may be held liable under [Section] 1983 when the individual who
27 committed the constitutional tort was an official with final
28 policy-making authority or such an official ratified a subordinate’s
unconstitutional decision or action and the basis for it.

Clouthier v. County of Contra Costa, 591 F.3d 1232, 1249–50 (9th Cir. 2010) (internal citations
omitted).

1 In his opposition to defendants’ motions, plaintiff explicitly abandoned his municipal
2 liability claim against Menlo Park. In regards to San Mateo, however, plaintiff points to the
3 fact that Sheriff Munks met with plaintiff’s mother, told him that plaintiff had hearing troubles,
4 and complained about previous arrests. Plaintiff thus asserts that he has alleged a plausible
5 municipal liability claim because “Munks adopted, ratified, and/or condoned the continuing
6 violations directed at Yousif” (Opp. at 9).

7 Not so. As an initial matter, the complaint does not state when plaintiff’s mother’s
8 meeting took place, only indicating that it happened in 2014. In addition, plaintiff’s municipal
9 liability claim is based upon allegations of “repeated constitutional violations” (*id.* at 10). As
10 described above, plaintiff has only plausibly pled one individual violation, thus negating the
11 inference plaintiff wishes to draw from multiple violations. Even if plaintiff could establish
12 multiple violations by San Mateo deputies (which he has not), the fact that plaintiff’s mother
13 met with Sheriff Munks on one occasion to complain, and the meeting did not produce the
14 results she had hoped for (that her son would not have more contacts with law enforcement),
15 does not lead to the plausible inference that the County of San Mateo had an official policy that
16 inflicted constitutional injury. More must be alleged to plead a plausible municipal liability
17 violation.

18 **CONCLUSION**

19 To the extent stated above, defendants’ motions to dismiss are **GRANTED IN PART AND**
20 **DENIED IN PART**. The motion to dismiss the Section 1983 claim against defendant Deputies
21 McLemore and Loubal, as alleged in Incident (6), is **DENIED**. The motions to dismiss all claims
22 against defendants Sheriff Munks, Deputy Laughlin, Officer Adair, County of San Mateo, and
23 City of Menlo Park are **GRANTED**.

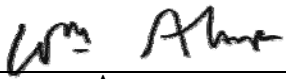
24 Plaintiff shall have until **MAY 25, 2016 AT NOON**, to file a motion, noticed on the normal
25 35-day calendar, for leave to amend his claims. A proposed amended complaint must be
26 appended to this motion. Plaintiff must plead his best case. The motion should clearly explain
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how the amended complaint cures the deficiencies identified herein, and should include as an exhibit a redlined or highlighted version identifying all changes.

IT IS SO ORDERED.

Dated: May 5, 2016.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE