UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MABO MUANZA,

Plaintiff,

v.

CITY OF HERCULES, et al.,

Defendants.

Case No. 17-cv-00909-JSC

ORDER GRANTING IN FORMA PAUPERIS APPLICATION, REVIEWING COMPLAINT UNDER SECTION 1915, AND DISMISSING WITH LEAVE TO AMEND

Re: Dkt. No. 2

Plaintiff Mabo Muanza brings this civil action against the City of Hercules, unknown City of Hercules law enforcement officers, and Eden Housing Management. (Dkt. No. 1.) The Court has already granted Plaintiff's application to proceed in forma pauperis and now reviews the complaint under 28 U.S.C. § 1915.[1] One cause of action in the complaint is sufficient to proceed to service, but the other is not, and there are no claims at all against one of the named Defendants. While the complaint could proceed to service on the sole sufficient claim, in the interest in settling the pleadings and defendants before service, the Court DISMISSES the complaint with leave to amend.

COMPLAINT ALLEGATIONS

On July 8, 2015, Plaintiff entered Eden Housing Management's office to submit correspondence regarding her rental terms and to request a hearing. (Dkt. No. 1 ¶ 6.) She submitted the document to the manager on duty and requested a signed receipt acknowledging her submission. (Id. ¶ 7.) The manager refused this request, and refused again when Plaintiff asked a second time. (Id. ¶¶ 7-8.)

[1] Plaintiff has consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. No. 7.)

The manager then called the police to have Plaintiff escorted out of the office. (Id. ¶ 8.) When the police arrived, the manager stated that she only wanted Plaintiff removed from the property and clarified that Plaintiff had not done anything wrong. (Id.) The manager still did not give Plaintiff a receipt acknowledging her submission. (Id.)

The police officer who arrived on scene told Plaintiff she had to leave. (Id. ¶ 9.) Plaintiff cooperated and began to follow the officer out of the office. (Id. ¶¶ 9-10.) As Plaintiff followed the officer out the door, when she was halfway over the threshold "the officer violently slammed the door onto [her], causing [Plaintiff] to be smashed between the door and the door frame, severely injuring her shoulder, [and] causing her to fall down to [the] ground in pain." (Id. ¶ 11.) The officer denied Plaintiff's request for medical assistance and then called to cancel the ambulance that other witnesses called for Plaintiff. (Id. ¶¶ 12-13.) Once the officers left, while Plaintiff waited outside of the office on a bench, witnesses called another ambulance, and Plaintiff was taken to the hospital for treatment. (Id. ¶ 14.)

In the complaint, filed February 22, 2017 under 42 U.S.C. § 1983, Plaintiff brings two causes of action. The first alleges that Eden Housing Management violated her Fourteenth Amendment right to due process by "refus[ing] to provide her with a receipt for a document that she submitted relating to her tenant status and her requesting a formal hearing" and "call[ing] the police as a tactic of intimidation to prevent [her] from exercising her Fourteenth Amendment rights." (Id. ¶¶ 15-16.) In that cause of action, she alleges that she had a constitutionally protected property interest in Section 8 housing benefits as a low income person. (Id. ¶ 17.) In the second cause of action, Plaintiff alleges that the unnamed Doe Officers violated her Fourth Amendment rights to be free from excessive force. (Id. ¶ 18.)

DISCUSSION

I. First Cause of Action Against Eden Housing Management

To plead a violation of Section 1983, a plaintiff must allege that (1) a person acting under the color of state law (2) violated her constitutional rights or rights secured by federal statute. West v. Atkins, 487 U.S. 42, 48 (1988); Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). The first cause of action is a Section 1983 claim against Eden Housing Management for violating

Plaintiff's Fourteenth Amendment right to due process by (1) refusing to give Plaintiff a receipt for her submission of documents and hearing request and (2) calling the police as a tactic of intimidation to prevent Plaintiff from exercising her Fourteenth Amendment rights with respect to her document and hearing request. (Dkt. No. 1 ¶¶ 15-16.)

A. Plaintiff Fails to Allege that Eden Housing Management was Acting Under Color of State Law

This cause of action fails to state a claim because there are no facts alleged that would support a finding that Eden Housing Management's complained of actions were done "under color of state law." See Allen v. Gold Country Casino, 464 F.3d 1044, 1048 (9th Cir. 2006) (affirming the district court's dismissal of the plaintiff's § 1983 claims "because there is no allegation that any defendant was acting under color of state law"). Plaintiff alleges that Eden Housing Management is a "private company engaged in the property management of property [sic] in the State of California." (Dkt. No. 1 ¶ 2.) Generally, private companies do not act under color of state law. See Price v. Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991).

Merely alleging an unsupported conclusion that a defendant was acting under color of state law is not enough. See, e.g., Ingram v. City of San Francisco, No. C12-3038 JSC, 2012 WL 2862266, at *2 (N.D. Cal. July 11, 2012). Instead, a plaintiff may plead a private entity has become a state actor by alleging facts sufficient to plausibly establish that the entity conspired with a state official, engaged in joint activity with state officials, became so closely related to the state that the person's actions can be said to be those of the state itself, or performed public functions or being regulated to the point that the conduct in question is practically compelled by the state. See Price, 939 F.2d at 708-09 (citations omitted); see also Peng v. Penghu, 335 F.3d 970, 980 (9th Cir. 2003). No such connection between Eden Housing Management and the state is pleaded in the complaint. The only connection between Eden Housing Management and the state alleged here is that the office manager called the police. But "courts have repeatedly held that a private citizen does not become a 'state actor' under Section 1983 by making a complaint to the police." Johnson v. OfficeMax, Inc., No. CIV 2:11-cv-2578-MCE-JFM (PS), 2011 WL 6141280, at *6 (E.D. Cal. Dec. 9, 2011) (citations omitted); see Collins v. Womancare, 878 F.2d 1145, 1155

(9th Cir. 1989).

Plaintiff's Section 1983 claim against Eden Housing Management therefore fails to state a claim and, consequently, fails to pass muster under Section 1915. See 28 U.S.C. § 1915(e)(2) (noting that courts must dismiss in forma pauperis complaints that fail to state a claim); Lopez v. Smith, 203 F.3d 1122, 1126-27 (noting that for failure to state a claim, § 1915(e)(2) paralegals Rule 12(b)(6)); see also Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (noting that, to state a claim to survive Rule 12(b)(6), the complaint must allege facts that plausibly establish the defendant's liability).

B. Constitutional Violation

The claim against Eden Housing Management also fails to state a claim sufficient to proceed to service because, even assuming that it was acting under color of state law, Plaintiff does not plausibly allege a constitutional violation. The Due Process Clause of the Fourteenth Amendment protects individuals from being deprived of life, liberty, or property without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). Procedural due process claims require (1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections. Kildare v. Saenz, 325 F.3d 1078, 1085 (9th Cir. 2003). Appropriate safeguards include the right to submit exhibits, present evidence, present the testimony of witnesses, rebut evidence submitted and be assisted by counsel. Kremer v. Chem. Constr. Corp., 456 U.S. 461, 483-84 (1982).

Here, Plaintiff alleges that she had a constitutionally protected property interest in Section 8 housing benefits. (Dkt. No. 1 ¶ 17.) The Ninth Circuit has held that a low income person has "a constitutionally protected 'property' interest in Section 8 benefits by virtue of her membership in a class of individuals whom the Section 8 program was intended to benefit."[2] Ressler v. Pierce, 692 F.2d 1212, 1215-16 (9th Cir. 1982). Courts within the Ninth Circuit have recognized claims against public housing authorities for failing to provide adequate procedural due process in

[2] "The Section 8 rental assistance program ('Section 8') provides rental assistance '[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing . . . .'" Jones v. Upland Housing Auth., No. EDCV 12-02074-VAP (OPx), 2013 WL 708540, at *2 (C.D. Cal. Feb. 21, 2013) (citing 42 U.S.C. § 1437f(a)).

connection with denials of Section 8 housing benefits where a public housing authority failed to comply "with federal regulations and due process" by denying tenants' requests to present evidence contesting the denial of their Section 8 applications, denying tenants an opportunity to present objections to the public housing authority's denial decision, and denying informal review of such decisions. See, e.g., No. EDCV 12-02074-VAP (OPx), 2013 WL 708540, at *2 (C.D. Cal. Feb. 21, 2013). Plaintiff has not alleged that Eden Housing Management was a public housing authority, but a private company.

But even putting that aside, the complaint does not identify what hearing was at issue and how Eden Housing Management was involved in it. And assuming for the purposes of Section 1915 review that there was a hearing pending about a landlord-tenant dispute between Plaintiff and Eden Housing Management or even Plaintiff's application for Section 8 benefits—which is not clearly or plausibly alleged in the complaint—Plaintiff has still failed to allege a lack of procedural due process. She alleges that she submitted evidence and requested a hearing; she never alleges that Eden Housing Management declined to consider her documents or denied her request for a hearing. The alleged violation stems only from the officer manager's failure to provide a receipt acknowledging her submissions. (See Dkt. No. 1 ¶¶ 7, 15.) Plaintiff has not identified authority that requires a landlord or property manager to provide such receipt rendering its absence an actionable denial of procedural due process, and the Court has found none. Nor has Plaintiff identified any other federal law or regulation that Eden Housing Management violated.

Plaintiff also alleges that Eden Housing Management violated her Fourteenth Amendment right to due process by calling the police to intimidate her from exercising her Fourteenth Amendment rights. (Id. ¶ 16.) The Court is not aware of any authority holding that calling the police in an attempt to interfere with due process rights violates the Fourteenth Amendment right to due process. But to the extent that it exists, it fails because Plaintiff has not plausibly alleged what due process rights were at issue, as discussed above. The claim cannot survive Section 1915 review as written. Plaintiff shall have leave to amend the claim against Eden Housing Management to identify the defects identified in this Order.

II. Second Cause of Action Against Doe Defendant Officers

Plaintiff's second cause of action is an excessive force under the Fourth Amendment against the Doe officer who slammed the door in her face. (Dkt. No. 1 ¶ 18.) The first element of a Section 1983 claim—that the defendant was acting under color of state law—is met here as the defendant is a law enforcement officer. Plaintiff has also adequately alleged the second element: a constitutional violation.

Claims of excessive force before and during arrest are governed by the Fourth Amendment and its "reasonableness" standard. See Graham v. Connor, 490 U.S. 386, 395 (1989); Reed v. Hoy, 909 F.2d 324, 329 (9th Cir. 1989), cert. denied, 501 U.S. 1250 (1991) ("It is clear that under Graham, excessive force claims arising before or during arrest are to be analyzed exclusively under the [F]ourth [A]mendment's reasonableness standard . . . .") (citation omitted). That analysis requires balancing the "nature and quality of the intrusion" on a person's liberty with the "countervailing governmental interests at stake" to determine whether the use of force was objectively reasonable under the circumstances." Graham, 490 U.S. at 396.

The "reasonableness" inquiry in a Fourth Amendment excessive force case is an objective one: "[t]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them[.]" Id. at 397 (citations omitted); see, e.g., Jackson v. City of Bremerton, 268 F.3d 646, 651 (9th Cir. 2001). "The question is not simply whether the force was necessary to accomplish a legitimate police objective; it is whether the force used was reasonable in light of all the relevant circumstances." Hammer v. Gross, 932 F.2d at 846 (emphasis in original).

Here, Plaintiff alleges that an officer ordered her to leave the property management office and she complied, following the officer out of the front door, when the officer violently slammed the door on Plaintiff, trapping her between the door and the doorframe then causing her to fall to the ground. The complaint sufficiently alleges facts that plausibly establish that no force at all was objectively reasonable under the circumstances, let alone the amount of force the officer used. Accordingly, Plaintiff has stated a claim for excessive force under the Fourth Amendment against the Doe officer who slammed the door on her. Notably, Plaintiff appears to bring the claim

against multiple Doe officers, but she has only alleged the involvement of the single officer, so the claim only lies against that individual.

III. The City of Hercules is Dismissed from this Action

Although Plaintiff names the City of Hercules as a defendant in this case, she does not bring any claims against it. Nor are there any facts alleged that could give rise to a plausible claim against the City for municipal liability under Monell v. N.Y. Department of Social Services, 436 U.S. 658 (1978).

Municipalities may be held liable as "persons" under 42 U.S.C. § 1983, but not for the unconstitutional acts of their employees based solely on respondeat superior. Id. at 691. Instead, a plaintiff seeking to impose liability on a municipality under Section 1983 must "identify a municipal 'policy' or 'custom' that caused the plaintiff's injury." Johnson v. Shasta Cnty., 83 F. Supp. 3d 918, 930 (E.D. Cal. 2015) (citation omitted). Thus, to state a claim under Section 1983, a plaintiff must allege: (1) that the plaintiff possessed a constitutional right of which he or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving force behind the violation. Plumeau v. Sch. Dist. No. 40 Cnty. of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997). A Monell claim can take one of three forms: "(1) when official policies or established customs inflict a constitutional injury; (2) when omissions or failures to act amount to a local government policy of 'deliberate indifference' to constitutional rights; or (3) when a local government official with final policy-making authority ratifies a subordinate's unconstitutional conduct." Brown v. Contra Costa Cnty., No. C-12-1923 PJH, 2014 WL 1347680, at *8 (N.D. Cal. Apr. 3, 2014) (citing Clouthier v. Cnty. of Contra Costa, 591 F.3d 1232, 1249-50 (9th Cir. 2010)).

Here, Plaintiff does not allege a specific Monell claim against the City of Hercules. But to the extent that he seeks to hold the City liable based on the second cause of action for excessive force, these allegations are insufficient because they do not identify any policies, customs, or practices that led to the alleged violation or include facts that support a plausible deliberate indifference claim. Accordingly, Plaintiff has not stated a claim for municipal liability.

CONCLUSION

For the reasons described above, while the excessive force claim against a single Doe officer is sufficient to proceed to service, the claim against Eden Housing Management is not, and there are no claims at all against the City of Hercules. Plaintiff shall have leave to amend the complaint by **April 28, 2017**. If Plaintiff fails to file an amended complaint by that date, the Court will dismiss the first cause of action with prejudice, dismiss the City of Hercules from this action with prejudice, and allow the initial complaint to proceed to service solely on the second cause of action against the Doe officer.

IT IS SO ORDERED.

Dated: April 5, 2017

JACQUELINE SCOTT CORLEY
United States Magistrate Judge