

1 *NOT FOR PUBLICATION*

2
3 UNITED STATES DISTRICT COURT
4 NORTHERN DISTRICT OF CALIFORNIA

5
6 **DENNIS BRUCE ALLUMS,**

7 Plaintiff,

8 v.

9 **DEPARTMENT OF JUSTICE, ET AL.,**

10 Defendants.

Case No. 4:19-cv-04906-YGR

**ORDER GRANTING DEFENDANTS BAY
AREA RAPID TRANSIT'S AND FEDERAL
DEFENDANTS' MOTIONS TO DISMISS
PLAINTIFF DENNIS BRUCE ALLUMS'
SECOND AMENDED COMPLAINT**

Re: Dkt. No. 41, 42

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12 Plaintiff Dennis Bruce Allums brings *pro se* this second amended complaint for violation
13 of civil rights against defendants Department of Justice, the Federal Bureau of Investigation, John
14 Does 1-99 (collectively, the "Federal Defendants"), and Bay Area Rapid Transit ("BART").¹ (Dkt.
15 No. 38.) Mr. Allums brings a *Bivens* claim based on criminal conspiracy, defamation, invasion of
16 privacy, and harm based on injuries including a herniated disk and torn ligaments. (*Id.* at 5.)

17 Now pending before the Court are BART's and the Federal Defendants' motions to
18 dismiss Mr. Allums' second amended complaint. (Dkt. No. 38.) Having carefully considered the
19 pleadings and the papers submitted, and for the reasons set forth more fully below, the Court
20 hereby **GRANTS** the motions to dismiss.

21 **LEGAL FRAMEWORK**

22 A complaint that falls short of the Rule 8(a) standard may be dismissed if it fails to state a
23 claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "Dismissal under Rule 12(b)(6)
24 is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to
25 support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097,

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27 ¹ As explained herein, although the second amended complaint does not identify BART as
28 a party to this litigation, BART is identified as a party against which a claim is asserted. (*See* Dkt.
No. 38 at 21 (allegation and claim regarding BART).)

1 1104 (9th Cir. 2008). For purposes of ruling on a Rule 12(b)(6) motion, the Court “accept[s]
2 factual allegations in the complaint as true and construe[s] the pleadings in the light most
3 favorable to a nonmoving party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,
4 1031 (9th Cir. 2008). Mere “conclusory allegations of law and unwarranted inferences are
5 insufficient to defeat a motion to dismiss.” *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir.
6 2004). In other words, the operative complaint must plead “enough facts to state a claim [for]
7 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim
8 is plausible on its face “when the plaintiff pleads factual content that allows the court to draw the
9 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,
10 556 U.S. 662, 678 (2009).

11 Moreover, a defendant may move to dismiss a complaint for lack of subject matter
12 jurisdiction under Rule 12(b)(1). *See Savage v. Glendale Union High Sch., Dist. No. 205,*
13 *Maricopa Cty.*, 343 F.3d 1036, 1039- 40 (9th Cir. 2003). Courts consider the issue as a threshold
14 matter before addressing the merits of a case. *Steel Co. v. Citizens for a Better Env’t*, 523 US 83,
15 94 (1998). Plaintiffs bear the burden of establishing jurisdiction because, by filing a complaint in
16 federal court, they seek to invoke it. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375,
17 377 (1994).

18 Finally, the Court construes Mr. Allums’ pleadings liberally, as he is proceeding *pro se*.
19 *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (“A document filed *pro se* is to be liberally
20 construed . . . and a *pro se* complaint, however inartfully pleaded, must be held to less stringent
21 standards than formal pleadings drafted by lawyers[.]” (internal quotation marks omitted)).

22 **ANALYSIS**

23 The Court in a prior Order dismissed Mr. Allums’ first amended complaint because of
24 defects in the complaint against then defendant City of Berkeley. (Dkt. No. 28.) Mr. Allums
25 thereafter filed the operative second amended complaint, which asserted causes against the Federal
26 Defendants and BART. (Dkt. No. 38.) Although Mr. Allums was permitted another opportunity
27 to amend his complaint, the gravamen of second amended complaint is as unclear as the first
28 amended complaint which the Court dismissed. In short, the second amended complaint seems to

1 concern events commencing in and around 2002 or 2004 through the present. More specifically,
2 Mr. Allums alleges that he thwarted a conspiracy against a well-known celebrity, and claims
3 writing credit for a formerly popular television show. Because of these actions, Mr. Allums
4 alleges that he was subject to retaliation from the Federal Defendants, whose agents have sought to
5 defame and discredit him through interactions in the Bay Area, including on BART trains and in
6 the city of Berkeley. Specifically, Mr. Allums provides allegations regarding several interactions
7 with individuals – mostly women – which he contends, based on their behavior and interactions
8 with him, demonstrates human trafficking and continued harassment as Mr. Allums alleges that
9 these individuals are agents of the Federal Defendants. Mr. Allums also alleges that his privacy
10 has been invaded, and that Federal Defendants are protecting a dangerous man local in the city of
11 Berkeley.

12 With this context, the Court analyzes the two motions to dismiss before it:

13 BART’s Motion to Dismiss. **GRANTED.** The second amended complaint does not list
14 BART as a party in this action, but it does contain allegations that reflect an interaction Mr.
15 Allums had on a BART train with an individual he alleges was a child molester. (Dkt. No. 38 at
16 21.) In his opposition to BART’s motion to dismiss, Mr. Allums clarifies that this claim is not
17 made *against* BART, but rather is a pattern of practice by the Federal Defendants. (Dkt. No. 48 at
18 4 (“The first and second amendment [sic] complaints are not against them. That is why their
19 names are taken off. . . . They are no longer part of the complaint. . . . IT IS NOT A CLAIM
20 AGAINST BART. IT IS A CLAIM AGSINT [sic] FEDERAL AGENTS.”), 5 (“Again, the
21 plaintiff is referring to federal agents, not SFBART.”), 6 (“In conclusion, despite the fact that this
22 suit is no longer/currently about [BART], it is clear that there is enough to add them back at a later
23 date yet I choose not at this time.”).) As the second amended complaint does not otherwise
24 contain any allegations as to BART, this is now the third complaint Mr. Allums has filed in this
25 matter, and Mr. Allums does not otherwise argue that BART is appropriately included in this
26 action, BART’s motion to dismiss is **GRANTED.** BART is **DISMISSED** from this matter.

27 Federal Defendants’ Motion to Dismiss. **GRANTED.** Federal Defendants aver that
28 dismissal is appropriate because (1) *Bivens* actions against federal agencies are barred by the

1 doctrine of sovereign immunity, and (2) the John Does should be dismissed because the complaint
2 fails to identify specifically John Does to each unconstitutional action, and the complaint is
3 otherwise incoherent, nonsensical, and rambling. Mr. Allums opposes both of these requests for
4 dismissal, citing as authority the Federal Torts Claim Act and *Bivens* actions against officials
5 instead of federal agencies.

6 First, with respect to whether Mr. Allums' claims are barred by the doctrine of sovereign
7 immunity, Mr. Allums does not persuade. "The United States can be sued only to the extent that it
8 has waived its sovereign immunity." *Baker v. United States*, 817 F.2d 560, 562 (9th Cir. 1987),
9 *cert. denied*, 487 U.S. 1204 (1988). "Absent a waiver, sovereign immunity shields the Federal
10 Government and its agencies from suit." *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). "A claim for
11 damages against a federal agency is barred by sovereign immunity unless Congress has consented
12 to suit." *Gilbert v. DaGrossa*, 756 F.2d 1455, 1460, n.6 (9th Cir. 1985). "Where a suit has not
13 been consented to by the United States, dismissal of the action is required." *Id.* at 1458. "Thus,
14 the United States may not be sued without its consent and the terms of such consent define the
15 court's jurisdiction." *Baker*, 817 F.2d at 562. "A waiver of traditional sovereign immunity is not
16 implied but must be unequivocally expressed." *United States v. Testan*, 424 U.S. 392, 399 (1976).
17 Waivers of immunity must be "construed strictly in favor of the sovereign," *McMahon v. United*
18 *States*, 342 U.S. 25, 27 (1951), and not "enlarge[d] . . . beyond what the language requires,"
19 *Eastern Transp. Co. v. United States*, 272 U.S. 675, 686 (1927).

20 "The question whether the United States has waived its sovereign immunity against suits
21 for damages is, in the first instance, a question of subject matter jurisdiction." *McCarthy v. United*
22 *States*, 850 F.2d 558, 560 (1988), *cert. denied*, 489 U.S. 1052 (1989). "A party bringing a cause of
23 action against the federal government bears the burden of showing an unequivocal waiver of
24 immunity." *Baker*, 817 F.2d at 562. "It is incumbent upon the plaintiff properly to allege the
25 jurisdictional facts" *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178,
26 182 (1936).

27 *Bivens* "created a remedy for violations of constitutional rights committed by federal
28 officials acting in their *individual* capacities." *Consejo De Desarrollo Economico De Mexicali*,

1 *A.C. v. United States*, 482 F.3d 1157, 1173 (9th Cir. 2007) (emphasis supplied). “In a
 2 paradigmatic *Bivens* action, a plaintiff seeks to impose personal liability upon a federal official
 3 based on alleged constitutional infringements he or she committed against the plaintiff.” *Id.*
 4 (citing *Balser v. Department of Justice, Office of U.S. Trustee*, 327 F.3d 903, 909 (9th Cir. 2003)).
 5 “[A] *Bivens* action can be maintained against a defendant in his or her individual capacity only,
 6 and not in his or her official capacity.” *Id.* (citing *Daly-Murphy v. Winston*, 837 F.2d 348, 355
 7 (9th Cir. 1987)). “This is because a *Bivens* suit against a defendant in his or her official capacity
 8 would merely be another way of pleading an action against the United States, which would be
 9 barred by the doctrine of sovereign immunity.” *Id.* (citing *Nurse v. United States*, 226 F.3d 996,
 10 1004 (9th Cir. 2000)). “Therefore, the Supreme Court has refused to extend *Bivens* remedies from
 11 individuals to agencies.” *Id.* (citing *Meyer*, 510 U.S. at 484 (1994)); *Stine v. Bureau of Prisons*,
 12 No. 2:18-cv-0684 KJN P, 2018 WL 2771332, at *3 (E.D. Cal. June 7, 2018) (“A *Bivens* action
 13 will not lie against the United States, or agencies of the United States.” (citing *Meyer*, 510 U.S. at
 14 484)).

15 Here, Mr. Allums seeks to bring a *Bivens* action against the Federal Defendants – the
 16 Department of Justice and Federal Bureau of Investigations – both of which are agencies of the
 17 United States. The law is clear. The Court lacks subject matter jurisdiction over the second
 18 amended complaint as it pertains to the Federal Defendants and must dismiss them from this
 19 action with prejudice. *See, e.g., Stine*, 2018 WL 2771332, at *3 (dismissing the BOP, Western
 20 Regional Office; the Federal BOP; the DOJ; and the SIU/Sacramento, BOP as defendants in a
 21 *Bivens* action without leave to amend); *Daskalakis v. FBI*, No. 4:10-CV-221-BLW, 2011 WL
 22 1900439, at *5-6 (D. Idaho Apr. 28, 2011) (dismissing *Bivens* claims against the FBI and the U.S.
 23 Drug Enforcement Agency with prejudice).

24 Next, Mr. Allums argues that discovery should be permitted as to the John Doe defendants.
 25 Again, Mr. Allums does not persuade. “As a general rule, the use of ‘John Doe’ to identify a
 26 defendant is not favored.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (citing *Wiltsie v.*
 27 *California Department of Corrections*, 406 F.2d 515, 518 (9th Cir.1968)); *see also* Fed. R. Civ. P.
 28 10(a) (“The title of the complaint must name all the parties”). “However, . . . where the

1 identity of alleged defendants will not be known prior to the filing of a complaint. . . . , the
2 plaintiff should be given an opportunity through discovery to identify the unknown defendants.”
3 *Id.* But a court need not permit discovery if “it is clear that discovery would not uncover the
4 identities, or that the complaint would be dismissed on other grounds.” *Id.* (citations omitted).

5 Here, it is not clear that discovery would uncover the identities and the complaint is
6 appropriately dismissed on other grounds. Mr. Allums has failed to plead a sufficient factual basis
7 showing that any federal official, acting under the color of law, took part in the events alleged in
8 the second amended complaint. In similar circumstances, other courts have not permitted any
9 discovery. *See Martinez v. Davey*, No. 1:16-cv-1658-AWI-MJS (PC), 2018 WL 898153, at *5
10 (E.D. Cal. Feb. 15, 2018) (“Before Plaintiff may engage in discovery as to the unknown
11 defendants, he first must link each of them to a constitutional violation. He must address each
12 defendant separately, i.e., Doe 1, Doe 2, Doe 3, etc., and must set forth facts describing how any
13 Doe defendant personally participated in the violation of his constitutional rights.”) (citing *Iqbal*,
14 556 U.S. at 676-77); *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 578 (N.D. Cal. 1999)
15 (“[T]he plaintiff should identify the missing party with sufficient specificity such that the Court
16 can determine that defendant is a real person or entity who could be sued in federal court.”
17 (citations omitted)).

18 Moreover, the second amended complaint – although more concise than the prior
19 complaint before it – is still mainly incomprehensible and filled with irrelevant ramblings and text.
20 “While ‘the proper length and level of clarity for a pleading cannot be defined with any great
21 precision,’ Rule 8(a) has ‘been held to be violated by a pleading that was needlessly long, or a
22 complaint that was highly repetitious, or confused, or consisted of incomprehensible rambling.’”
23 *Cafasso v. Gen. Dynamics C4 Sys.*, 637 F.3d 1047, 1059 (9th Cir. 2011) (quoting 5 Charles A.
24 Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1217 (3d ed. 2010)). “A complaint
25 may be dismissed for violating Rule 8 even if ‘a few possible claims’ can be identified and the
26 complaint is not ‘wholly without merit.’” *Atherton v. Beverly Hills Pub. Library*, No. CV 19-
27 10167-CJC (KK), 2020 WL 94508, at *2 (C.D. Cal. Jan. 8, 2020) (quoting *McHenry v. Renne*, 84
28 F.3d 1172, 1179 (9th Cir. 1996)).

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Thus, the Federal Defendants’ motion to dismiss is **GRANTED**. The Federal Defendants are **DISMISSED** from this matter.

CONCLUSION


Accordingly, for the foregoing reasons, the Court **GRANTS BART’s** and the Federal Defendants’ motions to dismiss. “It is well-established that a court may dismiss an entire complaint with prejudice where plaintiffs have failed to plead properly after repeated opportunities.” *Destfino v. Reiswig*, 630 F.3d 952, 959 (9th Cir. 2011) (internal quotation marks omitted). Mr. Allums has now had three opportunities to file a complaint, each one suffering the same defects as the prior complaint – namely, that the pleadings contain rambling, irrelevant, and incomprehensible text that fail to state a cognizable claim against the appropriate defendants, even when read as liberally as possible. Although the complaints have been getting relatively more concise, none of the complaints filed to date have satisfied Rule 8’s requirements. The Court finds that dismissal with prejudice is now appropriate. Accordingly, this matter is **DISMISSED WITH PREJUDICE**.

The Clerk of the Court is directed to close this matter.

This Order terminates Docket Numbers 41 and 42.

IT IS SO ORDERED.

Dated: September 15, 2020


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE