

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK BATES,

Plaintiff,

v.

CITY OF SAN JOSE, et al.,

Defendants.

Case No. [15-cv-05729 NC](#)**ORDER REQUIRING ADDITIONAL
BRIEFING REGARDING
PLAINTIFF'S DUE PROCESS
CLAIM**

Re: Dkt. Nos. 16, 19

In this constitutional case, plaintiff Bates has alleged a violation of his due process rights. Two issues require additional briefing.

The first issue is whether Bates is bringing a substantive due process claim or a procedural due process claim, or both. He must state the constitutional right he has been deprived of by the Defendants' failure to investigate his claims of misconduct in his 2006 trial. He must submit a brief not to exceed three pages by May 31, 2016.

Second, in their motion to dismiss the complaint, Defendants argue that Bates' due process claim must fail because it alleges a violation of City ordinances, not federal law. Dkt. No. 16 at 16. Defendants state that Bates fails to allege facts supporting a federal civil rights action because the complaint "allege[s] violations of the policies, ordinances, and other provisions of the City of San Jose. . . . Instead of the laws of the United States." *Id.* This argument needs further explanation. Liberty and property interests that qualify for protection under the Due Process Clause include real property, entitlements, and liberty

1 interests, including rights of free movement, association, and speech. *Vasquez v.*
2 *Rackauckas*, 734 F.3d 1025, 1042 (9th Cir. 2013). A state statute can provide a
3 “protectable entitlement” and thereby provide an avenue for a substantive due process
4 claim. *Greenholtz v. Inmates of Nebraska Penal & Corr. Complex*, 442 U.S. 1, 12 (1979);
5 *Toussaint v. McCarthy*, 801 F.2d 1080, 1089 (9th Cir. 1986) (a protectable entitlement
6 “may arise from either of two sources: the due process clause itself or state law”). If a
7 state or city creates an entitlement but subsequently denies citizens access to that
8 entitlement without due process of law, then it violates the Due Process clause. *See e.g.*,
9 *Wolff v. McDonnell*, 418 U.S. 539 (1974) (holding that a Nebraska statute created a liberty
10 interest protected by due process guarantees). State law that can create an entitlement
11 includes a city’s ordinances and policies. *Wedges/Ledges of California, Inc. v. City of*
12 *Phoenix, Ariz.*, 24 F.3d 56, 63 (9th Cir. 1994) (“the provisions of the Phoenix City Code
13 create an articulable standard sufficient to give rise to a legitimate claim of entitlement”)
14 (internal citations and quotations omitted). Defendants are ordered to file additional
15 briefing addressing this issue. They must submit a brief not to exceed three pages by May
16 31, 2016.

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18 **IT IS SO ORDERED.**

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20 Dated: May 23, 2016

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22 NATHANAEL M. COUSINS
23 United States Magistrate Judge
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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 May 24, 2016, 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.

Frederick Bates
1235 Muirkirk Ct.
Folsom, CA 95630

Dated: May 24, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Lili Harrell, Deputy Clerk to the
Honorable NATHANAEL M. COUSINS