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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT JACOBS,
Plaintiff,
v.
BENJAMIN WINKLEBLACK, et al.,
Defendants.

Case No. 17-cv-06790-NC

**ORDER GRANTING IN PART
DEFENDANTS' MOTION TO
DISMISS**

Re: ECF 8

Even at the pleading stage, properly stating a due process claim is no nap in the sun. It requires a plaintiff to claw through Fourteenth Amendment jurisprudence littered with multiplicative, shifting, and overlapping legal theories. Still, Federal Rule of Civil Procedure 8 requires a plain statement of the plaintiff's claim, so the constitutional ball of yarn must be untangled and delineated before the case can move on.

Here, plaintiff Robert Jacobs does not identify a cognizable legal theory for his claim that defendants Benjamin Winkleblack, Melanie Sobel, and the Santa Cruz County Animal Services Authority (SCCASA) violated his constitutional due process rights when they allowed a third party to adopt a cat that Jacobs claims he owned. The Court therefore GRANTS Defendants' motion to dismiss as to Jacobs' Fourteenth Amendment due process claims, with leave to amend. The remaining claims depend on the federal claims for supplemental subject matter jurisdiction, so the Court declines to reach Defendants' motion on these claims, unless and until Jacobs amends the complaint.

1 **I. BACKGROUND**

2 The following factual allegations pled in the complaint are taken as true and
3 construed in the light most favorable to Jacobs. *See Manzarek v. St. Paul Fire & Marine*
4 *Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).

5 On June 24, 2015, Jacobs took a trip from his home in Simi Valley, California to
6 Watsonville, California and brought along his cat. Third Amended Compl. (TAC) ¶ 13
7 (ECF 1-6). The cat was an orange, black, and white short-haired calico named Carli. *Id.* On
8 July 4, 2015, while still in Watsonville, Carli escaped from Jacobs’ hotel room. *Id.* ¶ 14.
9 Jacobs tried for several days, unsuccessfully, to find Carli by putting up flyers, driving
10 around Watsonville looking for her, and talking to people and rescue groups in the area. *Id.*
11 ¶ 15. The complaint does not allege that Jacobs looked for Carli at the animal shelter
12 during this quest for the runaway feline. *See id.*

13 On August 8, 2015, after Jacobs returned to his home in Simi Valley, he received an
14 anonymous phone call informing him that there was a cat at the Santa Cruz County Animal
15 Shelter matching the photo and physical description on the flyers Jacobs had posted. *Id.* ¶
16 16. Two days later, on August 10, 2015, Jacobs went to the shelter and found Carli there,
17 with her name and other information written on the outside of the cage. *Id.* ¶ 17. When
18 Jacobs opened the cage to pet Carli, a shelter employee told Jacobs he could not pet the cat
19 without first filling out adoption paperwork. *Id.* Jacobs asserted that he did not need to fill
20 out adoption forms because he was Carli’s owner. *Id.* As evidence of ownership, he
21 showed the shelter employees his driver’s license and a photo of himself with Carli that
22 had been taken in May of 2015. *Id.* Carli did not have a microchip or license. *Id.* When the
23 shelter employee noticed from the driver’s license that Jacobs lived in Simi Valley, she
24 refused to allow Jacobs to take the cat, citing a shelter rule restricting the distance adopted
25 cats could travel. *Id.* ¶ 18. At Jacobs’ behest, the employee confirmed the policy with her
26 managers, defendants Winkleblack and Sobel. *Id.* After the travel restriction policy was
27 confirmed, Jacobs argued the point “for some time” but eventually gave up and left. *Id.*

28 Over a period of several days, Jacobs went back to the shelter five or six times

1 trying to reclaim Carli, but each time was denied. *Id.* ¶ 19. On the final visit, on August 21,
2 2015, Winkleblack confronted Jacobs, saying he heard Jacobs tried to steal Carli on his
3 previous attempts to reclaim her and allegedly physically pushing Jacobs away from
4 Carli’s cage and toward the exit. *Id.* Winkleblack then yelled at Jacobs, threatened to call
5 the sheriff and have Jacobs arrested for trespassing, and said, “I would rather kill the cat,
6 than return her to you.” *Id.* Jacobs responded, “God forbid,” and immediately left the
7 shelter. *Id.*

8 At Jacobs’ request, Jacobs’ friend Carol Thomas came from her home in
9 Sacramento and tried on August 25, 2015, to adopt Carli. *Id.* ¶ 20. The shelter employee
10 working at the front desk told Thomas she lived too far away and could not adopt the cat.
11 *Id.* Thwarted, Jacobs returned home, where he “tried other [unspecified] avenues to obtain
12 the return of his cat.” *Id.* ¶ 21.

13 Jacobs filed a civil action on July 26, 2016, in California Superior Court, County of
14 Santa Cruz. *See* Notice of Removal (ECF 1); Complaint (ECF 1-1). The original complaint
15 contained only state law causes of action, but Jacobs amended the complaint three times,
16 eventually adding claims for violations of federal civil rights under the Fourteenth
17 Amendment to the U.S. Constitution. *See* Notice of Removal ¶¶ 2–6; *see generally* TAC.
18 With the federal civil rights claims as a jurisdictional basis, Defendants removed the action
19 to federal court. *See* Notice of Removal ¶¶ 7–10.

20 The third amended complaint lists three causes of action against Winkleblack,
21 Sobel, and SCCASA:

- 22 • Declaratory Judgment of Ownership (referring to California Government
23 Code § 910 et. seq., California Food and Agricultural Code § 31752, and
24 Santa Cruz County Ordinances §§ 6.20.090, 6.20.100);
- 25 • Trespass to Chattel (referring to California Food and Agricultural Code §§
26 31752, 31754 and California Government Code §§ 815.2, 910 et. seq.); and
- 27 • Violation of Civil Rights (referring to the Fourteenth Amendment of the U.S.
28 Constitution; Article 1, § 7(a) of the California Constitution; Santa Cruz

1 County Code §§ 6.20.090, 6.20.010; California Food and Agricultural Code
2 §§ 31752, 31752.2, 31754; and California Civil Code §§ 654, 655, 663, 669,
3 679).

4 Defendants now move under Rule 12(b)(6) to dismiss the operative third amended
5 complaint for failure to state a claim. *See* Mot. to Dismiss (ECF 8). All parties have
6 consented to magistrate judge jurisdiction under 28 U.S.C. § 636(c). *See* ECF 9, 17.

7 **II. LEGAL STANDARD**

8 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and
9 plain statement of the claim showing that the pleader is entitled to relief.” A defendant may
10 move to dismiss a complaint for failing to state a claim upon which relief can be granted
11 under Federal Rule of Civil Procedure 12(b)(6). “Dismissal under Rule 12(b)(6) is
12 appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to
13 support a cognizable legal theory.” *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d
14 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, a plaintiff must plead
15 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*
16 *Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when a plaintiff pleads
17 “factual content that allows the court to draw the reasonable inference that the defendant is
18 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

19 In reviewing the plausibility of a complaint, courts “accept factual allegations in the
20 complaint as true and construe the pleadings in the light most favorable to the nonmoving
21 party.” *Manzarek*, 519 F.3d at 1031. Nonetheless, Courts do not “accept as true allegations
22 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In*
23 *re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

24 If dismissal is appropriate under Rule 12(b)(6), a court “should grant leave to
25 amend even if no request to amend the pleading was made, unless it determines that the
26 pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203
27 F.3d 1122, 1130 (9th Cir. 2000) (citation and internal quotation marks omitted).

1 **III. DISCUSSION**

2 **A. Federal Claims**

3 The Court begins its analysis with Jacobs’ Fourteenth Amendment claims, as these
4 are the hook for federal jurisdiction under 28 U.S.C. § 1331.¹ Fundamentally, the
5 Fourteenth Amendment prohibits states from “depriv[ing] any person of life, liberty, or
6 property, without due process of law.” U.S. Const. Amend. XIV. The complaint alleges
7 that Defendants violated Jacobs’ right to both substantive and procedural due process
8 under the Fourteenth Amendment by refusing to allow Jacobs to take Carli home and
9 instead allowing a third party to adopt Carli. TAC ¶¶ 65, 67.

10 Before delving into the complaint’s numerous and intertwined assertions about the
11 Fourteenth Amendment claims, it is helpful to step back. Guiding this analysis is the
12 important recognition that procedural and substantive due process violations are distinct
13 legal claims, each with their own set of elements and facts that must be pled in a
14 complaint. A § 1983 claim based on procedural due process has three elements: “(1) a
15 liberty or property interest protected by the Constitution; (2) a deprivation of the interest
16 by the government; [and] (3) lack of process.” *Portman v. Cty. of Santa Clara*, 995 F.2d
17 898, 904 (9th Cir. 1993). In contrast, a substantive due claim process involves showing
18 that the government engaged in conduct that is so arbitrary it “shocks the conscience.” *Cty.*
19 *of Sacramento v. Lewis*, 523 U.S. 833, 845-46 (1998).

20 Equally important is the recognition that a due process claim—procedural or
21 substantive—varies depending on who or what did the depriving. With substantive due
22 process, for example, the “criteria to identify what is fatally arbitrary differ depending on
23 whether it is legislation or a specific act of a governmental officer that is at issue.” *Cty. of*
24 *Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). And in the latter case where a government
25 officer’s action caused the deprivation, then a government entity like SCCASA “may not
26

27 ¹ Although the complaint does not cite or reference it, 42 U.S.C. § 1983 provides the
28 statutory cause of action for constitutional claims like the ones Jacobs brings here. Jacobs
acknowledges this in his opposition brief. *See* Opp. at 15 (ECF 23).

1 be held liable under 42 U.S.C. § 1983, unless a policy, practice, or custom of the entity can
 2 be shown to be a moving force behind [the] violation of constitutional rights.” *Dougherty*
 3 *v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011) (citing *Monell v. Dep’t of Soc. Servs.*
 4 *of N.Y.C.*, 436 U.S. 658, 690–91 (1978)). A similar point—that the nature of the alleged
 5 deprivation colors the constitutional analysis—can be made for procedural due process.
 6 For example, the existence of post-deprivation state law remedies can nullify a procedural
 7 due process claim, but only when the deprivation was caused by random and unauthorized
 8 conduct; such a claim is not barred where the deprivation is foreseeable and the state can
 9 therefore be reasonably expected to make a pre-deprivation process available. *See*
 10 *Zinerman v. Burch*, 494 U.S. 113, 136–39 (1990); *Swenson v. Siskiyou Cty.*, 498 F. App’x
 11 719, 720 (9th Cir. 2012). Clearly, constitutional law can get a little hairy. This kind of
 12 nuance demands precision in the pleadings.

13 Jacobs’ complaint is inadequate under Rule 8 and subject to dismissal under Rule
 14 12(b)(6), because it muddles the distinctions articulated above in a way that makes it
 15 impossible to discern Jacobs’ legal theory of liability. *See Bell Atl. Corp. v. Twombly*, 550
 16 U.S. 544, 562 (2007) (noting that a complaint must allege “all the material elements
 17 necessary to sustain recovery under some viable legal theory”); *Mendonso v. Centinela*
 18 *Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) (“Dismissal under Rule 12(b)(6) is
 19 appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to
 20 support a cognizable legal theory.”). The complaint alleges that the Food and Agricultural
 21 Code and Santa Cruz County Code required “Defendants, and each of them” to allow
 22 Jacobs “the right to redeem his cat prior to any disposition of the animal” and to give
 23 Jacobs notice and “an opportunity to contest” before allowing Carli to be adopted by a
 24 third party. TAC ¶ 58. The complaint continues by asserting that Defendants’ “refusal to
 25 return the cat to [Jacobs], under the guise of enforcing an arbitrary, unreasonable and
 26 unconstitutional travel ban, violated [Jacobs’] rights” under the Fourteenth Amendment
 27 and the California Constitution. TAC ¶ 63.

28 Peering even slightly past the surface of these allegations reveals an unwieldy

1 number of potential due process claims waiting to pounce, with little guidance on which
 2 version Jacobs is actually claiming. Is Jacobs challenging the facial constitutionality of the
 3 shelter’s “travel ban,” for example, or the individual defendants’ application of it, or both,
 4 or neither? Or perhaps the claim is for the shelter employees’ failure to follow the relevant
 5 state and county law. In that case, the complaint must make eminently clear which
 6 employees allegedly committed the violation, and who is responsible for that behavior. Is
 7 it, for example, a respondeat superior claim against Winkleblack and Sobel for an
 8 unnamed shelter employees’ behavior, and/or a *Monell* claim against SCCASA? With only
 9 a little imagination, countless other variations of potential due process claims could be
 10 massaged from these broad assertions.

11 Jacobs’ explanations of his claims in paragraphs 65–69 of the complaint only
 12 further confuse. Regarding substantive due process, Jacobs claims that Winkleblack’s
 13 behavior toward Jacobs on August 21, 2015—physically and verbally confronting him and
 14 threatening to kill Carli rather than giving her to Jacobs— was “the type of capricious
 15 government conduct that violates substantive due process” and is “exactly what
 16 substantive due process is intended to prevent.” TAC ¶ 66. If this is the extent of Jacobs’
 17 substantive due process claim, then the complaint falls flat in explaining how Sobel or
 18 SCCASA violated Jacobs’ substantive due process rights. It is also doubtful that these
 19 allegations could sustain a substantive due process claim, as “substantive due process does
 20 not guarantee a pleasant tone of voice or courteous manner,” and “assertions of hostile
 21 tone of voice do not otherwise transform” a state agent’s action “into conscience shocking
 22 conduct.” *Brittain v. Hansen*, 451 F.3d 982, 998 (9th Cir. 2006). Furthermore, this
 23 substantive due process theory neglects and strays from Jacob’s apparent facial challenge
 24 to the shelter’s “travel ban.”

25 On procedural due process, Jacobs asserts that “Defendants had no appropriate
 26 procedures to prevent an unconstitutional deprivation of property” and “provided no
 27 mechanism for [Jacobs] to challenge the decision or to seek review of their determination
 28 that the photographic evidence of ownership he provided was not sufficient.” TAC ¶¶ 67–

1 68. Framed in this way, Jacobs appears to be making a facial challenge to the adequacy of
2 the relevant state and county policies. If so, this claim does not implicate the individual
3 defendants, and it chafes at Jacobs’ assertion that the Food and Agricultural Code § 31752
4 did afford him a right to claim Carli before she was adopted. *See* TAC ¶ 60.

5 Muddled indeed. To comply with Rule 8, Jacobs’ complaint must at a minimum lay
6 out each substantive due process claim and procedural due process claim he asserts and,
7 for each one:

- 8 • Identify what the precise property deprivation was and when it happened
9 (e.g. refusing to allow Jacobs to claim the cat versus allowing a third party
10 to adopt the cat without an opportunity for Jacobs to be heard);
- 11 • Identify what caused the deprivation (e.g. Winkleblack’s confrontation of
12 Jacobs or the government statutes and regulations on their face); and
- 13 • Spell out the theory of liability that applies to the defendant or defendants
14 (e.g. direct liability, *Monell*).

15 Without these delineations, the complaint’s coarse strokes do not fulfill Rule 8’s
16 most basic requirement to plainly state a plausible claim for relief. However, with
17 amendment, the claims may yet land on their feet. Thus, Jacobs’ Fourteenth Amendment
18 claims are DISMISSED, with leave to amend.

19 **B. State Law Claims**

20 The remaining claims in the complaint are within the Court’s discretionary
21 supplemental jurisdiction under 28 U.S.C. § 1367, but do not have an independent basis for
22 federal subject matter jurisdiction. The Court may decline to exercise supplemental
23 jurisdiction if it has dismissed all claims over which it has original jurisdiction. *See*
24 *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (citing 28 U.S.C. §
25 1367(c)(3)). And the Court has “discretion to remand when the exercise of pendent
26 jurisdiction is inappropriate.” *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988).

27 Because the federal claims are subject to dismissal, the Court does not reach
28 Defendants’ motion to dismiss Jacobs’ state law claims. If Jacobs does not amend the

1 complaint to properly state a federal claim for relief, the Court will remand the state law
2 claims to Santa Cruz County Superior Court.

3 **IV. CONCLUSION**

4 Jacobs' third amended complaint fails to state a claim for relief under federal law,
5 because it does not reasonably identify a cognizable legal theory for procedural or
6 substantive due process violations under the Fourteenth Amendment. These constitutional
7 claims are DISMISSED, with leave to amend.

8 Without viable federal claims, there is no independent basis for subject matter
9 jurisdiction over the remaining state law claims. Thus, the Court does not reach
10 Defendants' motion to dismiss the state law claims, but anticipates remanding them to state
11 court unless Jacobs amends the complaint to state a federal claim.

12 The amended complaint, should Jacobs choose to file one, is due March 5, 2018.

13 **IT IS SO ORDERED.**

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15 Dated: February 12, 2018



NATHANAEL M. COUSINS
United States Magistrate Judge

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