

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT INGERSOLL,
Plaintiff,
v.
CITY OF DEL REY OAKS, et al.,
Defendants.

Case No.19-cv-01164-NC

**ORDER GRANTING
DEFENDANTS’ MOTION TO
DISMISS WITH LEAVE TO
AMEND**

Re: Dkt. No. 5

Before the Court is defendants City of Del Rey Oaks and City Manager Dino Pick’s¹ motion to dismiss plaintiff Robert Ingersoll’s complaint alleging a federal Monell claim for violation of due process and a claim for breach of the covenant of good faith and fair dealing. See Dkt. No. 5. The Court finds that Ingersoll does not allege sufficient facts to support his Monell claim. Likewise, the Court finds that Ingersoll fails to allege that he presented Del Rey Oaks with a written claim for breach of contract prior to initiating litigation, as required under Cal. Gov’t Code § 905. Accordingly, the Court GRANTS Defendants’ motion to dismiss with leave to amend.

¹ Erroneously sued as Daniel Pick.

1 **I. Background**

2 **A. Allegations in the Complaint**

3 In early November 2004, the City of Del Rey Oaks first hired Ingersoll as a reserve
4 police officer. Dkt. No. 1–1 (“Compl.”) ¶ 7. Del Rey Oaks then hired Ingersoll as a
5 regular, full-time police officer in late September 2013, and promoted him to Police
6 Sergeant in November 2016. Id. ¶¶ 8, 9. In early April 2017, Del Rey Oaks placed
7 Ingersoll on paid, administrative leave pending an administrative investigation. Id. ¶ 10.
8 In October of the same year, Del Rey Oaks notified Ingersoll of a pending investigation
9 into allegations of workplace misconduct. Id. ¶ 11. Agents interviewed Ingersoll on
10 behalf of Del Rey Oaks in December 2017. Id. ¶ 12.

11 On February 12, 2018, Del Rey Oaks Chief of Police J. Hoyne sent a letter to Del
12 Rey Oaks City Manager Dino Pick recommending disciplinary action against Ingersoll.
13 Id. ¶ 13. Pick sent a letter to Ingersoll the next day detailing the allegations against him
14 and notifying him of Pick’s intention to terminate his employment. Id. ¶ 14. According to
15 Ingersoll, the allegations in the letter were both vague and pre-textual in nature, as well as
16 outside the statute of limitations. Id. ¶¶ 15–16; but see Dkt. No. 5, Ex. A.² Ingersoll
17 further alleges: (1) that a city councilperson made the decision to remove him because of
18 his perceived loyalty to Hoyne’s predecessor; and (2) that “Del Rey Oaks has initiated and
19 maintained a policy and practice of denying mandatory due process protections to its
20 employees.” Id. ¶¶ 16, 21. Following a Skelly hearing on February 23, 2018, Del Rey
21 Oaks terminated Ingersoll’s employment. Id. ¶ 17.

22 Ingersoll contends that he substantially performed his job duties throughout his
23 employment and that Defendants failed “to act fairly and in good faith.” Id. ¶¶ 25–27.

24 _____
25 ² Defendants’ motion to dismiss attaches five exhibits. Exhibit A is a memorandum from
26 Hoyne to Pick recommending Ingersoll’s dismissal. See Dkt. No. 15, Ex. A. Exhibit B is
27 an administrative complaint sent to Ingersoll notifying him of Pick’s intent to terminate his
28 employment and reminding Pick of his right to respond. See id., Ex. B. These two
exhibits are explicitly referenced in Pick’s Complaint. See Compl. ¶¶ 13, 14. Because
Pick does not contest the authenticity of these exhibits and his complaint “necessarily
relies” on these exhibits, the Court will consider them in its Order. *Lee v. City of Los
Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

1 **B. Procedural Background**

2 On January 22, 2019, Ingersoll filed his complaint with the Monterey County
3 Superior Court, alleging: (1) a federal Monell claim for violation of due process pursuant
4 to 42 U.S.C. § 1983; and (2) a state common law claim for breach of the covenant of good
5 faith and fair dealing. *Id.* at 5. On March 1, 2019, Defendants removed the action to this
6 Court pursuant to federal question jurisdiction. Dkt. No. 1.

7 Defendants moved to dismiss Ingersoll’s complaint on March 8, 2019. Dkt. No. 5.
8 Ingersoll filed an opposition on April 5, 2019. Defendants replied on April 12, 2019. See
9 Dkt. Nos. 14, 15. The Court found the motion suitable for decision without oral argument.
10 Dkt. No. 16. All parties have consented to the jurisdiction of a magistrate judge. Dkt.
11 Nos. 7, 13.

12 **II. Legal Standard**

13 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
14 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). On a
15 motion to dismiss, all allegations of material fact are taken as true and construed in the
16 light most favorable to the non-movant. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–
17 38 (9th Cir. 1996). The Court, however, need not accept as true “allegations that are
18 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” In re
19 *Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). Although a complaint need
20 not allege detailed factual allegations, it must contain sufficient factual matter, accepted as
21 true, to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*,
22 550 U.S. 544, 570 (2007). A claim is facially plausible when it “allows the court to draw
23 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*
24 *v. Iqbal*, 556 U.S. 662, 678 (2009).

25 If a court grants a motion to dismiss, leave to amend should be granted unless the
26 pleading could not possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203
27 F.3d 1122, 1127 (9th Cir. 2000); see also Fed. R. Civ. P. 15(a) (“The court should freely
28 give leave [to amend] when justice so requires.”).

1 **III. Discussion**

2 **A. Federal Monell Claim**

3 Ingersoll’s first claim alleges a federal Monell claim against both Defendants for
4 violation of due process pursuant to 42 U.S.C. § 1983. Compl. ¶¶ 18–23. Defendants
5 contend that this claim must be dismissed as to all Defendants. Dkt. No. 5 at 8.
6 Specifically, Defendants argue that Ingersoll fails to allege sufficient facts to support his
7 claim. Id. at 4. The Court agrees. The Court will also address the statute of limitations for
8 investigations under Cal Gov’t Code § 3304(d).

9 In a § 1983 action, a municipality is liable where the alleged action implements a
10 municipal policy or custom in violation of constitutional rights. *Monell v. Dep’t of Soc.*
11 *Servs. of the City of N.Y.*, 436 U.S. 658, 690 (1978). “Under Monell, municipalities are
12 subject to damages under § 1983 in three situations: when the plaintiff was injured
13 pursuant to an expressly adopted official policy, a long-standing practice or custom, or the
14 decision of a final policymaker.” *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th
15 Cir. 2013) (quotations omitted). In the third situation, a municipality can be liable for a
16 single act or decision so long as the person making the decision has “final policymaking
17 authority.” *Christie v. Iopa*, 176 F.3d 1231, 1235 (9th Cir. 1999).

18 **1. Policy or Long-Standing Custom**

19 Here, Ingersoll does not allege sufficient facts to support his claim that his injury
20 resulted from an official policy or long-standing custom of Del Rey Oaks. Ingersoll
21 alleges “[o]n information and belief, [that] Defendant City of Del Rey Oaks has initiated
22 and maintained a policy and practice of denying mandatory due process protections to its
23 employees subject to workplace discipline.” See Compl. ¶ 21. But Ingersoll does not cite
24 to any “policy statement, ordinance, regulation, or decision officially adopted or
25 promulgated by” Del Rey Oaks in support of his claims. *Monell*, 436 U.S. at 690. Nor
26 does Ingersoll allege facts supporting a “long-standing” custom. See *Bd. of Cty. Comm’rs*
27 *of Bryan Cty., Okla. v. Brown*, 520 U.S. 397, 404 (1997) (requiring “that the relevant
28 practice is so widespread as to have the force of law”). As Defendants highlight in their

1 motion to dismiss, Ingersoll’s statements present only “conclusory legal assertion[s].” See
 2 Dkt. No. 5 at 9. Therefore, because Ingersoll fails to sufficiently allege a policy or custom
 3 warranting Monell liability, his claim cannot advance on either theory.

4 **2. Final Policymaker**

5 Del Rey Oaks could still be liable under Monell if Pick was a final policymaker.
 6 See Ellins, 710 F.3d at 1066. The question of who has authority as a final policymaker is a
 7 matter of state law for the court to decide. *Id.*; see also *City of St. Louis v. Praprotnik*, 485
 8 U.S. 112, 124 (1988). Courts must “ask whether governmental officials are final
 9 policymakers for the local government in a particular area, or on a particular issue.”
 10 *McMillian v. Monroe Cty., Ala.*, 520 U.S. 781, 785 (1997).

11 Cal. Gov’t Code § 34851 allows municipalities to authorize city managers as final
 12 policy makers. See Ellins, 710 F.3d at 1066 (“California state law permits municipalities
 13 to enact regulations creating a ‘city manager’ form of governance”). Del Rey Oaks has
 14 enacted such regulations. See Del Rey Oaks Mun. Code § 2.08.10. Del Rey Oaks
 15 authorizes its city manager to “[c]ontrol, order and give directions to all heads of
 16 departments and to subordinate officers and employees of the city” See Del Rey Oaks
 17 Mun. Code § 2.08.070(B). In addition, Del Rey Oaks empowers the city manager to
 18 “[a]ppoint, remove, promote and demote each officer and employee of the city, excepting
 19 the city attorney” See Del Rey Oaks Mun. Code § 2.08.070(C). The court in Ellins
 20 examined essentially identical municipal regulations for the city of Sierra Madre and found
 21 that those regulations vested final policymaking authority in the municipality’s city
 22 manager. See Ellins, 710 F.3d at 1066 (citing Sierra Madre Mun. Code §§ 2.08.70(B),
 23 (C)). Because the two codes are virtually identical, the Court finds that Pick was a final
 24 policymaker.

25 Even so, Ingersoll does not adequately state a claim for violation of due process
 26 because he provides only conclusory allegations. First, Ingersoll claims that “the
 27 allegations in the administrative complaint against [him] were so vague as to constitute a
 28 denial of due process.” Compl. ¶ 15. Ingersoll does not provide any further details on the

1 vagueness of the administrative complaint even though his Complaint “necessarily relies”
2 on the administrative complaint. See Lee, 250 F.3d at 688. Defendants provided the
3 administrative complaint as an exhibit in their motion to dismiss. See Dkt. No. 5 Ex. B.
4 As explained above, Ingersoll does not contest the exhibit’s authenticity and referenced it
5 in his Complaint, so the Court will consider it here. See *infra*, n.2.

6 The six-page administrative complaint first references three separate charges levied
7 against Ingersoll relating to his false statements in connection with his employment
8 application for the reserve police officer position. See Dkt. No. 5, Ex. B. Specifically, the
9 administrative complaint describes a federal plea agreement from 1991 entered by
10 Ingersoll over a misdemeanor count of violating an individual’s civil rights. See *id.* at 1–2.
11 Ingersoll apparently failed to disclose that plea on his employment application. *Id.* The
12 administrative complaint then describes seven additional charges of misconduct as a police
13 officer with Del Rey Oaks. See *id.* at 3–4. It then explains in detail Ingersoll’s alleged use
14 of racial epithets in numerous incidents as recent as December 15, 2017. See *id.* at 4–5.
15 Thus, Ingersoll’s claim of vagueness not only lacks specificity, but is also contradicted by
16 the administrative complaint it references.

17 Second, Ingersoll acknowledges that his termination came after a Skelly hearing.
18 See *id.* ¶ 17. Under California law, a Skelly hearing grants permanent employees the right
19 to a hearing to dispute punitive actions taken by their employers. *Skelly v. State Pers. Bd.*,
20 15 Cal. 3d 194, 203 (1975) (holding that “[e]xcept in cases involving minor disciplinary
21 matters, the employee has a right to an evidentiary hearing to challenge the action taken
22 against him). By his own admission, Ingersoll states that he was terminated “[f]ollowing a
23 Skelly hearing” as required for due process. See *id.*; see also Dkt. No. 5, Ex. B at 5–6
24 (notifying Ingersoll of his right to a hearing). Other than conclusory allegations that the
25 hearing was “inadequate,” Ingersoll does not sufficiently allege any facts explaining what
26 inadequacies or due process violations were present in the Skelly hearing he received.

27 In short, Ingersoll does not allege sufficient facts to support his Monell claim.
28

1 **3. Statute of Limitations**

2 Ingersoll’s complaint also misapplies the statute of limitations for completion of an
3 administrative investigation under Cal. Gov’t Code § 3304(d)(1). The statute states a
4 public agency may not take “punitive action, nor [deny a] promotion on grounds other than
5 merit [for] any . . . allegation of misconduct” unless it concludes an investigation into that
6 misconduct “within one year of the public agency’s discovery by a person authorized to
7 initiate an investigation of the allegation of . . . misconduct.” Cal. Gov’t Code
8 § 3304(d)(1) (emphasis added); see also *Pedro v. City of Los Angeles*, 229 Cal. App. 4th
9 87, 103 (2014) (holding that the “one-year period under [§ 3304(d)(1)] begins to run upon
10 the discovery by a person authorized to initiate an investigation of an allegation of
11 misconduct”).

12 In his Complaint, Ingersoll states that “the allegations [against him] were alleged to
13 have occurred at times well beyond the statute of limitations.” See Compl. ¶ 15. He
14 further alleges that “Defendant Pick was aware that the statute of limitation had expired on
15 multiple allegations against Plaintiff.” See *id.* ¶ 17. But the statutes of limitation for the
16 misconduct underlying Pick’s investigation are not relevant to § 3304(d)(1). Ingersoll’s
17 allegations misunderstand when the statute of limitations begins to accrue under
18 § 3304(d)(1): “within one year of the public agency’s discovery . . . of misconduct.” Cal.
19 Gov’t Code § 3304(d)(1). As Ingersoll acknowledges in his Complaint, the investigation
20 commenced on April 17, 2017, and concluded with Ingersoll’s termination on March 1,
21 2018, a period of less than one year. Ingersoll does not allege that Pick or any other person
22 “authorized to initiate an investigation” discovered the underlying misconduct prior to
23 March 1, 2017. Indeed, at least one of the allegations levied against Ingersoll concerned
24 false statements made in December 2017, well within § 3304’s statute of limitations.
25 Therefore, Ingersoll’s allegations to this point are baseless. See *id.*

26 Accordingly, the Court GRANTS Defendants’ motion to dismiss Ingersoll’s Monell
27 claim.
28

1 **B. Breach of the Covenant of Good Faith and Fair Dealing**

2 Ingersoll next claims a breach of the covenant of good faith and fair dealing against
3 Del Rey Oaks. See Compl. ¶¶ 24–29.

4 Cal. Gov’t Code § 905 requires presentation of “all claims for money or damages
5 against local public entities” prior to the start of litigation. Cal Gov’t Code § 905; see also
6 City of Stockton v. Super. Ct., 42 Cal. 4th 730, 734 (2007). Cal. Gov’t Code § 910
7 specifies the information claims must include, such as the name and address of the
8 claimant, a description of the circumstances and injury alleged, and the names of public
9 employees allegedly involved. Cal. Gov’t Code § 910. Contract claims fall under this
10 requirement. Stockton, 42 Cal. 4th at 738 (finding that “[c]ontract claims fall within the
11 plain meaning of the requirement that ‘all claims for money or damages’ be presented to a
12 local public entity”). “It is well-settled that claims statutes must be satisfied even in face
13 of the public entity’s actual knowledge of the circumstances surrounding the claim.” Id.
14 (quoting State of Cal. v. Super. Ct. (Bodde), 32 Cal. 4th 1234, 1239 (2004)).

15 Ingersoll does not allege that he presented a written claim to Del Rey Oaks prior to
16 commencing this litigation. See Compl. ¶¶ 24–29. In his opposition to Defendants’
17 motion, Ingersoll contends that he presented “a timely claim and fairly described the
18 course of the events leading to the alleged liability.” See Dkt. No. 14 at 8. However,
19 Ingersoll fails to make that allegation in his Complaint (see generally, Compl.) and, on a
20 motion to dismiss, the Court’s review is limited to the four corners of the operative
21 complaint, judicially noticeable facts, and documents incorporated into the complaint by
22 reference. See Lee, 250 F.3d at 688 (9th Cir. 2001).

23 Ingersoll’s opposition also includes a declaration by his attorney stating that he
24 presented a claim to Del Rey Oaks in June 2018. See Dkt. No. 14 (“Sarsfield Decl.”). It
25 also attaches a letter from Del Rey Oaks rejecting that claim. See id., Ex. A. But the
26 rejection letter is neither referenced in nor attached to his Complaint. See generally,
27 Compl. In any case, even if the Court were inclined to consider the rejection letter, it does
28 not explain what claims or information Ingersoll presented to Del Rey Oaks. Therefore,

1 Ingersoll's Complaint fails to allege that he presented a claim to Del Rey Oaks as required
2 by § 905.

3 Because Ingersoll does not allege that he presented a claim to Del Rey Oaks as
4 required by Cal. Gov't Code § 905, or any details of such a claim, the Court GRANTS the
5 Defendants' motion to dismiss Ingersoll's claim for breach of the covenant of good faith
6 and fair dealing. The Court grants leave to amend, as it appears there are additional facts
7 that could be asserted.

8 **IV. Conclusion**

9 The Court GRANTS Defendants' motion to dismiss with leave to amend.
10 Ingersoll's amended complaint, if any, must be filed by **June 14, 2019**. The amended
11 complaint must cure the deficiencies notes in this order and may not add any claims or
12 parties without leave of the Court.

13 **IT IS SO ORDERED.**

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15 Dated: May 31, 2019



NATHANAEL M. COUSINS
United States Magistrate Judge

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