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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DARYL LOWRY,  
  
v.  
METROPOLITAN TRANSIT,  
  
Plaintiff,  
  
Defendant.

Case No. 09cv1081 BTM (WVG)  
**ORDER RE MOTIONS TO DISMISS**

Defendant Metropolitan Transit System (“MTS”) (erroneously sued as Metropolitan Transit) has moved to dismiss the First Amended Complaint [Doc. 20]. Defendant Heritage Security Services (erroneously sued as Heritage Security) has also filed a motion to dismiss [Doc. 22]. For the following reasons, the Court **GRANTS** MTS’s motion, and **GRANTS in part** and **DENIES in part** Heritage’s motion.

**I. BACKGROUND**

Plaintiff alleges violations of his constitutional rights and several state-law causes of action based on an alleged fight he had with security officers on a trolley near the Old Town Transit Center in San Diego. The Court more thoroughly discussed the facts of this case in an order dated March 8, 2010 [Doc. 17]. That order dismissed several of Plaintiff’s claims with leave to amend. Plaintiff has filed a First Amended Complaint (“FAC”). The Court resolves the issues raised in the parties’ motions as set forth below.

1 **II. LEGAL STANDARD**

2 Under Federal Rule of Civil Procedure 8(a)(2), the plaintiff is required only to set forth  
3 a “short and plain statement of the claim showing that the pleader is entitled to relief,” and  
4 “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”  
5 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When reviewing a motion to  
6 dismiss, the allegations of material fact in plaintiff’s complaint are taken as true and  
7 construed in the light most favorable to the plaintiff. See *Parks Sch. of Bus., Inc. v.*  
8 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). But only factual allegations must be  
9 accepted as true—not legal conclusions. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).  
10 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
11 statements, do not suffice.” *Id.* Although detailed factual allegations are not required, the  
12 factual allegations “must be enough to raise a right to relief above the speculative level.”  
13 *Twombly*, 550 U.S. at 555. Furthermore, “only a complaint that states a plausible claim for  
14 relief survives a motion to dismiss.” *Iqbal*, 129 S. Ct. at 1949.

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16 **III. DISCUSSION**

17 **1. Constitutional Claims**

18 As discussed in the Court’s March 8, 2010 order, Plaintiff appears to allege a claim  
19 under 42 U.S.C. § 1983.<sup>1</sup> But Defendants MTS and Heritage can only be liable under § 1983  
20 if the violation was the result of either a policy or a failure to train their employees. See *Bd.*  
21 *of County Comm’rs v. Brown*, 520 U.S. 397, 403 (1997); *City of Canton, Ohio v. Harris*, 489  
22 U.S. 378, 388 (1989). Plaintiff alleges neither.

23 The closest Plaintiff comes to alleging a policy or failure to train is this: “Defendants  
24 have intentionally or unintentionally conspired with each other, together as individuals, or  
25 collectively, to past, present and into the future to violate the civil right of the Plaintiff, under  
26 color of law by their past, present and future unguided by any known policies with regard to  
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28 <sup>1</sup> Plaintiff also mentions the Eighth Amendment, but alleges no facts supporting a claim under this amendment.

1 the enforcement of the peace and/or law enforcement.” Although this sentence mentions  
2 policies, it does not allege how those policies led to his injuries, or that MTS failed to train its  
3 employees. He also alleges that the “trolley security is made up people that don’t know what  
4 there doing.” This allegation is too vague and fails to support his constitutional claims.

5 The constitutional claims against MTS and Heritage are **DISMISSED without**  
6 **prejudice**. Because Plaintiff has successfully pled in a related case that policies and a  
7 failure to train led to his injuries, the Court grants him leave to amend.

8 Plaintiff also alleges a “de facto government civil conspiracy to violate civil rights.”  
9 This claim is unintelligible, devoid of facts, and the Court **DISMISSES** it without prejudice with  
10 leave to amend.

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## 12 **2. Plaintiff’s State Law Claims Against MTS**

13 Plaintiff again fails to show compliance with the California Government Claims Act  
14 (“CGCA”). Under the CGCA, a Plaintiff must first present a written claim to a public entity  
15 and wait for the board to act upon it before bringing a claim for money or damages against  
16 that public entity. Cal. Gov. Code § 945.4. A plaintiff’s failure to plead compliance with this  
17 requirement of the CGCA is cause for dismissal. See *Karim-Panahi*, 839 F.2d 621, 627 (9th  
18 Cir. 1988). Plaintiff already had a chance to cure this deficiency and he did not. All of  
19 Plaintiff’s state-law claims against MTS are **DISMISSED without prejudice** without leave  
20 to amend for failure to allege compliance with the CGCA. *Chappel*, 232 F.3d at 725–26.

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## 22 **3. Plaintiff’s State Law Claims Against Heritage**

### 23 A. Perjury

24 The Court has already dismissed this claim with prejudice because under California  
25 law, there is no civil cause of action for perjury; it is a criminal offense. *Temple Cmty. Hosp.*  
26 *v. Superior Court*, 20 Cal. 4th 464, 472 (1999).

27 Heritage does not move to dismiss any of the other state-law claims.

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1 **4. Motions for a More Definite Statement**

2 MTS and Heritage have also moved for a more definite statement. The Court **DENIES**  
3 those motions, as Plaintiff's surviving state-law claims are not "so vague or ambiguous that  
4 [they] cannot prepare a response." Fed. R. Civ. P. 12(e). The factual allegations supporting  
5 his state-law claims are reasonably specific and detailed, and give Defendants sufficient  
6 notice of the nature of Plaintiff's claims.

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**IV. CONCLUSION**

9 For the foregoing reasons, the Court **GRANTS** MTS's motion to dismiss in its entirety  
10 [Doc. 20]. The state-law claims against MTS are **DISMISSED without prejudice** and  
11 without leave to amend, and the § 1983 claim is **DISMISSED without prejudice** and with  
12 leave to amend. The Court **GRANTS in part** and **DENIES in part** Heritage's motion to  
13 dismiss [Doc. 22]. The Court **DISMISSES with prejudice** the perjury claim, and **DISMISSES**  
14 **without prejudice** and with leave to amend the § 1983 claim against Heritage. The motions  
15 for a more definite statement are **DENIED**.

16 Plaintiff has leave to amend the § 1983 claim only. He must file his Second Amended  
17 Complaint within fourteen days of the issuance of this order. He may re-plead the state  
18 causes of action other than the perjury claim. Any claim not pled shall be deemed waived.  
19 This is Plaintiff's last chance to plead this case, and any claims pled in the Second Amended  
20 Complaint that are deficient shall be dismissed with no leave to amend. Therefore, the Court  
21 encourages Plaintiff to read the orders in this case carefully.

22 **IT IS SO ORDERED.**

23 DATED: June 16, 2010

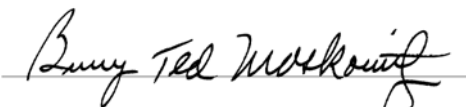
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Honorable Barry Ted Moskowitz  
United States District Judge