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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT RAYMOND REAN,)
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 Plaintiff,)
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 vs.)
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 CITY OF LAS VEGAS, *et al.*,)
)
 Defendants.)
 _____)

Case No.: 2:10-cv-01094-RLH-RJJ

ORDER

(Motion to Dismiss #27;
Motion to Dismiss #28;
Motion to Dismiss #32;
Motion to Amend Complaint #38
Motion for Leave to File Second
Amended Complaint #47;
Motion in Limine #53)

Before the Court is Defendants Robert Foster, Bradley Arb, and Steven Albright’s **Motion to Dismiss** (#27, filed date Jan. 5, 2011) for failure to state a claim. The Court has also considered Plaintiff Robert Raymond Rean’s Opposition (#36, filed Jan. 24, 2011), and Foster, Arb, and Albright’s Reply (#42, filed Feb. 3, 2011).

Also before the Court is Defendants Rocco LePore and Shawn Judd’s **Motion to Dismiss** (#28, filed Jan. 6, 2011) for failure to state a claim. The Court has also considered Rean’s Opposition (#36, filed Jan. 24, 2011), and LePore and Judd’s Reply (#43, filed Feb. 3, 2011).

Also before the Court is Defendant Clark County Detention Center’s (“CCDC”) **Motion to Dismiss** (#32, filed Jan. 6, 2011) for failure to state a claim. The Court has also

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1 considered Rean's Opposition (#36, filed Jan. 24, 2011), and CCDC's Reply (#41, filed Feb. 3, 2011).

2 Also before the Court is Rean's **Motion to Amend Complaint** (#38, filed Jan. 24,
3 2011. No defendant responded to this motion.

4 Also before the Court is Rean's **Motion for Leave to File Second Amended**
5 **Complaint** (#47, Apr. 6, 2011). The Court has also considered Defendants' Opposition (#49, filed
6 Apr. 25, 2011), and Rean's Reply (#50, filed May 6, 2011).

7 Also before the Court is Rean's **Motion in Limine** (#53, filed June 2, 2011). The
8 Court has also considered LePore's Opposition (#53, filed June 20, 2011)

9 **BACKGROUND**

10 This dispute arises out of Rean's incarceration at the CCDC. Rean alleges that when he
11 was first booked at the CCDC, Defendant Arb informed him that he would be housed in general
12 population. However, after a Jane Doe officer attempted to photograph Rean's tattoos and Rean
13 declined, he was placed in the maximum security section of the CCDC. Rean subsequently made
14 requests and filed grievances to correct what he felt was unfair treatment or an unfair designation.
15 Defendant Foster then informed him that until he allowed photographs of his tattoos, he would be kept in
16 the maximum security unit. Rean continued to refuse the officers attempts to photograph his tattoos.

17 Eventually, at a hearing in his state court criminal matter, Rean apparently consented to
18 have his tattoos photographed. Rean withdrew this consent, however, when he felt the conditions he
19 placed on the consent were not immediately granted, specifically, immediate transfer back to federal
20 prison prior to serving his state court sentence at the CCDC. Sometime later, Defendants LePore and
21 Judd forcefully extracted Rean from his cell with a team of other, masked officers (apparently the
22 Sheriff's Emergency Response Team or SERT). The SERT team entered the cell, placed Rean in hand
23 and leg cuffs, removed him from the cell, strapped him into a chair, and wheeled him to the booking and
24 photographing area of the CCDC. In front of various people of both sexes, Rean's pants were ripped
25 off resulting in his boxer shorts being torn which exposed his penis and testicles. The rest of his clothing
26 was cut off of him in an allegedly menacing manner. Unidentified officers twisted, turned, and bent Rean

1 into position for tattoo photographing, during which time Rean was continuously screaming. Rean also
2 alleges that one of the officers recorded this event with a video camera.

3 Further, Rean alleges that the law library at the CCDC uses an “exact-cite/book-paging”
4 system that requires inmates to make specific requests for materials without the benefit of titles or
5 descriptions of the available resources. Because of this system, Rean was impeded from and unable to
6 complete legal research for various state and federal claims he possessed.

7 Rean filed his complaint on July 1, 2010, and filed an Amended Complaint on November
8 19. In his Amended Complaint, Rean asserted four claims under 28 U.S.C. § 1983. Specifically, Rean
9 asserted the following claims: (1) violation of due process under the Fifth and Fourteenth Amendments;
10 (2) inadequate access to the law library, right of access to the courts; (3) deprivation of personal
11 property without due process under the Fifth and Fourteenth Amendments; and (4) use of excessive
12 force in violating his right to a reasonable expectation of privacy. In its Screening Order (Dkt. #13), the
13 Court dismissed Rean’s first and third claims in their entirety. As to Rean’s fourth claim, the Court held
14 that Rean stated a claim, alleging the search was unreasonable and used excessive force. The Court also
15 dismissed various Defendants, specifically: Clark County, Sheriff Gillespie, Chief Dixon, Clark County
16 Deputy District Attorney Sweetin, and David Barker, the judge in Rean’s state court criminal matter.

17 Now before the Court are three different motions to dismiss filed by various groups of
18 the remaining Defendants. Rean filed a joint response to these motions in which he claimed he had
19 insufficient time to adequately respond and requested an extension. However, before the Court
20 considered Rean’s request, Rean filed two separate motions for leave to amend, one with and one
21 without a proposed second amended complaint purporting to rectify the deficiencies addressed in the
22 motions to dismiss. As such, the Court granted Rean’s request in a minute order (Dkt. #62), but also
23 informed Rean that the Court would consider his motion for leave to amend as a supplement to his
24 response if he chose not to otherwise supplement. Rean did not file an additional supplement within the
25 time period set forth by the Court and so the Court considers the motion to amend as supplementary to
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1 Rean’s responses to the three motions to dismiss. For the reasons discussed below, the Court grants
2 each motion to dismiss and denies Rean’s motions for leave to amend and motion in limine.

3 DISCUSSION

4 I. Motions to Dismiss

5 A. Legal Standard

6 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which relief
7 can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short and plain
8 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell*
9 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual
10 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the elements of a
11 cause of action.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Papasan v. Allain*, 478 U.S.
12 265, 286 (1986)). “Factual allegations must be enough to rise above the speculative level.” *Twombly*,
13 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter
14 to “state a claim to relief that is plausible on its face.” *Iqbal*, 129 S. Ct. at 1949 (internal citation
15 omitted).

16 In *Iqbal*, the Supreme Court recently clarified the two-step approach district courts are
17 to apply when considering motions to dismiss. First, a district court must accept as true all well-pled
18 factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
19 *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements,
20 do not suffice. *Id.* at 1949. Second, a district court must consider whether the factual allegations in the
21 complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff’s
22 complaint alleges facts that allows the court to draw a reasonable inference that the defendant is liable for
23 the alleged misconduct. *Id.* at 1949. Where the complaint does not permit the court to infer more than
24 the mere possibility of misconduct, the complaint has “alleged—but not shown—that the pleader is
25 entitled to relief.” *Id.* (internal quotation marks omitted). When the claims in a complaint have not
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1 crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*, 550 U.S. at
2 570.

3 First cause of action was dismissed as to all parties in the screening order. Even though the Court has
4 already dismissed this claim as to all Defendants, Rean retained the claim in his proposed second
5 amended complaint. (Dkt #47.) Additionally, Rean did not amend this claim with new facts or other
6 matters sufficient for it to now overcome a motion to dismiss, thus making amendment futile.

7 **B. Analysis**

8 **1. Foster, Arb, and Albright’s Motion to Dismiss**

9 Foster, Arb, and Albright first argue that Rean’s access to the courts claim should be
10 dismissed as regards to them. The Court concurs. As the Court stated in its screening order, “Count II
11 states a claim for violation of plaintiff’s right of access to the courts against defendant Olson.” (Dkt. #13,
12 7:6–7.) Accordingly, to the extent the Court did not make it clear in the earlier order, the Court
13 dismisses all other Defendants from this claim and the claim will proceed solely against Defendant Olson.

14 Further, Foster, Arb, and Albright contend that they are not implicated in Rean’s
15 remaining claim. This is true. Rean does not name or refer to Foster, Arb, or Albright in his claim for
16 unreasonable search and seizure and use of excessive force, nor does he dispute this in his response.
17 Rean’s only allegation against any of these officers is that Albright was one of the members of the
18 Conduct Board that found Rean ‘guilty’ of disobeying a direct order from CCDC staff. This allegation is
19 insufficient as an allegation of unreasonable search and seizure or use of excessive force. Therefore, it
20 appears that Rean did not even intend to plead this claim against

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22 these Defendants. If he did, however, they are dismissed. Accordingly, the Court dismisses Foster,
23 Arb, and Albright from this case as no claims remain against them.

24 **2. LePore and Judd’s Motion to Dismiss**

25 Defendants LePore and Judd move the Court to dismiss the remaining claims for
26 unreasonable search and seizure and excessive force against them in their official capacities. A suit

1 against government officers in their official capacities is “equivalent to a suit against the governmental
2 entity itself.” *Larez v. City of Los Angeles*, 946 F.2d 630, 646 (9th Cir. 1991). Accordingly, to sustain
3 a claim against these Las Vegas Metropolitan Police Department (“LVMPD”) officers in their official
4 capacity, Rean’s allegations must be sufficient to sustain a claim against LVMPD under the *Monell*
5 doctrine. *See id.* This requires that Rean plead an LVMPD policy amounting to deliberate indifference
6 of Plaintiff’s constitutional rights and that this policy created the violation of his constitutional rights. *Van*
7 *Ort. v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir. 1996). Here, Rean has only made conclusory
8 allegations as to a policy or practice, unsupported by facts. Accordingly, Rean has not sufficiently plead
9 *Monell* liability and the Court dismisses the claims against LePore and Judd in their official capacities. Of
10 course, the claims against LePore and Judd in their individual capacities remain.

11 3. CCDC’s Motion to Dismiss

12 The CCDC argues that it should be dismissed for two principal reasons: (1) it is merely a
13 building, not an entity capable of being sued or bringing suit, and (2) even assuming it could be sued,
14 Rean does not sufficiently allege *Monell* or municipal liability. The CCDC is correct on both counts.
15 The CCDC is merely the name of a building, not a government entity such as the LVMPD or a Clark
16 County. The CCDC is run by the LVMPD and any suit should be addressed against the LVMPD.
17 However, CCDC is also correct that Rean fails to plead *Monell* liability as just discussed in reference to
18 Judd and LePore. Accordingly, the Court dismisses CCDC from this case.

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20 II. Motion for Leave to Amend

21 A. Legal Standard

22 A party must seek leave to amend his complaint or receive written consent from the
23 opposing party if he seeks to amend more than 21 days after filing the complaint or 21 days after the
24 opposing party files a responsive pleading or Rule 12(b) motion. Fed. R. Civ. P. 15(a). The court has
25 discretion to grant leave and should freely do so “when justice so requires.” *Allen v. City of Beverly*
26 *Hills*, 911 F.2d 367, 373 (9th Cir. 1990) (quoting Fed. R. Civ. P. 15(a)). Nonetheless, courts may

1 deny leave to amend if it will cause: (1) undue delay; (2) undue prejudice to the opposing party; (3) the
2 request is made in bad faith; (4) the party has repeatedly failed to cure deficiencies; or (5) the amendment
3 would be futile. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008). Further,
4 when seeking leave to amend a pleading, Rule 15-1 of the Local Rules of Practice requires the moving
5 party to “attach the proposed amended pleading to any motion to amend so that it will be complete in
6 itself without reference to the superseding pleading.”

7 **B. Analysis**

8 Rean filed two motions to amend his complaint. The first motion to amend (Dkt. #38)
9 sought permission to file an amended complaint as part of Rean’s response to the various motions to
10 dismiss addressed above. Rean did not include a proposed amended complaint to this request as he did
11 to his second motion for leave to amend (Dkt. #47). Accordingly, the Court denies Rean’s first motion
12 for leave to amend for failure to attach a proposed amendment but will consider the second motion and
13 its attached amendment.

14 Rean’s latest attempt to correct his complaint through amendment is futile. In essence,
15 Rean’s proposed second amended complaint (“Proposed SAC”) is the same as his first amended
16 complaint (“FAC”) with very limited changes. As regards his fourth claim, Rean renumbered it by leaving
17 out his prior third claim (which the Court had dismissed) and substituted LVMPD for the CCDC. This
18 would be sufficient if Rean sufficiently plead *Monell* liability and had merely dismissed the CCDC
19 because it is a building. However, the Court addressed this issue above and held that Rean also fails to
20 state a *Monell* claim. Accordingly, merely substituting the LVMPD for the CCDC is futile. Rean would
21 have to include new factual allegations that would amount to pleading a policy or practice in his Proposed
22 SAC for it not to be futile. This, he has failed to do.

23 Further, as to Rean’s second cause of action, the Court previously dismissed the claim as
24 to all Defendants except T. Olson. Rean, however, has apparently attempted to include sufficient matter
25 in his Proposed SAC to expand this claim to re-include Douglas Gillespie and Defendant Dixon.
26 However, both of these potential defendants were included in Rean’s second claim in Rean’s FAC and

1 Rean has failed to present sufficient new material in his Proposed SAC to change the outcome.
2 Therefore, amendment of this claim would also be futile. The Court will, however, consider a future
3 request for leave to amend if Rean discovers sufficient information through discovery to plead a *Monell*
4 claim.

5 Finally, Rean has made no substantive changes to his first claim for due process violations
6 on the Fourteenth and Fifth Amendments. Rean's purported factual clarifications do not change the legal
7 analysis set forth in the Court's screening order (Dkt. #13) as they are immaterial to the actual issues and
8 still fail to state a claim. Therefore, as the Court already dismissed this claim, amendment is futile because
9 there hasn't been any substantive amendment. Accordingly, the Court denies the motion and this case
10 will proceed on the FAC.

11 As the case will proceed on the FAC, the Court takes this opportunity to detail the
12 claims that remain. The first and third claims in the FAC were dismissed in their entirety by a previous
13 order and remain dismissed now. The second claim has been dismissed as against all parties except T.
14 Olson. Finally, the fourth claim is dismissed against all parties except LePore, Judd, and the Doe SERT
15 Team members in their individual capacities.

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18 **III. Motion in Limine**

19 Rean brings a motion in limine based on evidence disclosed in discovery, specifically, the
20 photographs of his tattoos. Rean argues that these photographs are not material to the issues before the
21 Court and would be unfairly prejudicial at trial. While the Court may agree with Rean's assessment, at
22 this stage of the proceedings, this motion is premature. Just because a document is disclosed in
23 discovery does not mean that the disclosing party is attempting to enter that document into evidence as
24 Rean seems to believe. The Court will consider any motions in limine closer to trial. Accordingly, the
25 Court denies this motion without prejudice to Rean's refiling the motion nearer to trial.

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CONCLUSION

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Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Defendants Albright, Arb, and Foster's Motion to Dismiss (#27) is GRANTED.

IT IS FURTHER ORDERED that Defendants Judd and LePore's Motion to Dismiss (#28) is GRANTED.

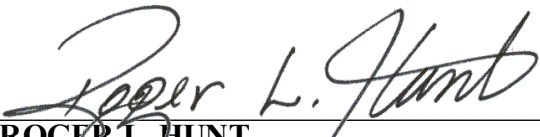
IT IS FURTHER ORDERED that Defendant CCDC's Motion to Dismiss (#32) is GRANTED.

IT IS FURTHER ORDERED that Rean's Motion for Leave to Amend (#38) is DENIED.

IT IS FURTHER ORDERED that Rean's Motion for Leave to Amend (#47) is DENIED.

IT IS FURTHER ORDERED that Rean's Motion in Limine (#53) is DENIED.

Dated: July 20, 2011



ROGER L. HUNT
United States District Judge