

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 BRENT MORRIS,)
4)
5 Plaintiff,)
6 vs.)
7 MITCHELL CABERTO, et al.,)
8 Defendants.)

Case No.: 2:16-cv-02416-GMN-NJK

ORDER

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10 Pending before the Court is the Motion to Dismiss, (ECF No. 5), filed by Defendants
11 Boyd Gaming Corporation, Coast Hotels and Casinos, Inc. dba the Orleans Hotel and Casino
12 ("Boyd"), Jeffrey Fine ("Fine"), and Elizabeth Sobczak ("Sobczak") (collectively
13 "Defendants"). Plaintiff Brent Morris¹ ("Plaintiff") filed a Response, (ECF No. 57), and
14 Plaintiff filed a Reply, (ECF No. 61). For the reasons discussed below, the Court GRANTS
15 Defendants' Motion.

16 I. BACKGROUND

17 Plaintiff's Complaint asserts various civil rights claims pursuant to 42 U.S.C. § 1983 for
18 alleged constitutional violations stemming from his arrest, trial, and conviction in Nevada state
19 court. (See generally Ex. B to Pet. for Removal ("Compl."), ECF No. 1-2). Plaintiff alleges that
20 on September 22, 2010, he was unlawfully arrested by officers of the Nevada Gaming Control
21 Board while he was gambling at the Caesars Palace Hotel and Casino ("Caesars"). (Id. at 2).
22 Plaintiff was arrested pursuant to NRS § 463.155 for being an "excluded person." (Id.). During

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25 ¹ In light of Plaintiff's status as a pro se litigant, the Court has liberally construed his filings, holding them to
standards less stringent than formal pleadings drafted by attorneys. See Erickson v. Pardus, 551 U.S. 89, 94
(2007).

1 the arrest, officers confiscated \$768.00 in Caesars gaming chips and \$5,000.00 in gaming chips
2 from the Orleans Hotel and Casino (“Orleans”). (Id.).

3 Plaintiff was thereafter charged with unlawful entry of an excluded person in violation
4 of NRS § 463.155 and fraudulent acts in a gaming establishment, in violation of NRS
5 § 465.070.3. See Nevada v. Morris, Case No. C-10-269265-1, Clark County District Court.²
6 Following a jury verdict and bench trial, Plaintiff was convicted of two counts of commission
7 of fraudulent acts in a gaming establishment and four counts of unlawful entry of an excluded
8 person in a gaming establishment. Id. His conviction was upheld on appeal by the Nevada
9 Supreme Court. See Morris v. State of Nevada, Nev. S. Ct. Case No. 58646 (unpublished
10 order).

11 During the course of the underlying state court proceedings, Plaintiff alleges that he
12 made three separate motions—one before trial and the other two post-conviction—seeking the
13 return of the gaming chips that were seized during his arrest. (See Compl. at 6–7). The pretrial
14 motion, filed on January 5, 2011, was denied. (Id. at 7). The first post-conviction motion was
15 filed on June 10, 2011. (Id.). The motion was denied without prejudice after representation that
16 a forfeiture action had not yet been filed. (Id.). Plaintiff then filed a third motion seeking the
17 return of the chips seized incident to his arrest. (Id.). Ultimately, on March 13, 2012, the
18 motion for return of property was granted in part and denied in part. (Id. at 8). The \$768.00 in
19 gaming chips from Caesars were returned, but the \$5,000.00 in gaming chips from the Orleans
20 were not returned because they were the subject of a separate interpleader action, State of
21 Nevada ex rel. State Gaming Control Board vs. Brent Morris, et al., Las Vegas Township
22 Justice Court, Case No. 12-C-003478 (complaint filed on February 6, 2012) (hereinafter
23 “Interpleader Action”). (Id.).

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25 ² The Court takes judicial notice of the state court orders pertinent to this case. See Papai v. Harbor Tug & Barge
Co., 67 F.3d 203, 207 (9th Cir. 1995), rev’d on other grounds, 520 U.S. 548 (1997) (“Judicial notice is properly
taken of orders and decisions made by other courts or administrative agencies.”).

1 Upon initiation of the Interpleader Action, the \$5,000.00 in Orleans gaming chips were
2 deposited with the Justice Court, and the parties claiming entitlement to the chips submitted
3 briefing regarding their respective claims. (Id.). On June 13, 2012, the judge in the Interpleader
4 Action granted a motion to return the chips to Boyd Gaming. (Id.). Shortly thereafter, Plaintiff
5 appealed the Justice Court’s decision in the Interpleader Action to the Clark County District
6 Court, which affirmed the lower court’s order on May 2, 2016. (Id. at 9). In the instant
7 Complaint, Plaintiff alleges that Defendants illegally seized the \$5,000.00 in Orleans gaming
8 chips in violation of his Fourth Amendment rights. (Id. at 4).

9 **II. LEGAL STANDARD**

10 Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a
11 cause of action that fails to state a claim upon which relief can be granted. See *North Star Int’l*
12 *v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to
13 dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the
14 complaint does not give the defendant fair notice of a legally cognizable claim and the grounds
15 on which it rests. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering
16 whether the complaint is sufficient to state a claim, the Court will take all material allegations
17 as true and construe them in the light most favorable to the plaintiff. See *NL Indus., Inc. v.*
18 *Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

19 The Court, however, is not required to accept as true allegations that are merely
20 conclusory, unwarranted deductions of fact, or unreasonable inferences. See *Sprewell v. Golden*
21 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
22 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a
23 violation is plausible, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
24 *Twombly*, 550 U.S. at 555) (emphasis added). “A claim has facial plausibility when the
25 plaintiff pleads factual content that allows the court to draw the reasonable inference that the

1 defendant is liable for the misconduct alleged.” Id. Rule 8(a)(2) requires that a plaintiff’s
2 complaint contain “a short and plain statement of the claim showing that the pleader is entitled
3 to relief.” Fed. R. Civ. P. 8(a)(2). “Prolix, confusing complaints” should be dismissed because
4 “they impose unfair burdens on litigants and judges.” McHenry v. Renne, 84 F.3d 1172, 1179
5 (9th Cir. 1996).

6 **III. DISCUSSION**

7 This is not Plaintiff’s first attempt to litigate the facts of this case. Aside from the state
8 court cases discussed supra, Plaintiff previously filed a nearly identical case in this district,
9 Morris v. The Orleans Hotel & Casino, Case No. 2:12-cv-01683-JCM-CWH (the “Orleans
10 case”), against, inter alia, the Orleans, Fine, and Sobczak. In the Orleans case, United States
11 District Judge James C. Mahan adopted the recommendation of United States Magistrate Judge
12 Carl W. Hoffman, agreeing that “[t]he claims against the defendant employees of the Orleans
13 [here Fines and Sobczak] fail as a matter of law.” Order 4:15–16, Morris v. The Orleans Hotel
14 & Casino, Case No. 2:12-cv-01683-JCM-CWH, ECF No. 26. Specifically, Judge Mahan found
15 that as “private individuals acting within the scope of their employment for a private hotel and
16 casino,” Plaintiff failed to allege that the alleged constitutional violations were committed by a
17 person acting under color of state law as required to state a claim under 42 U.S.C. § 1983. Id.
18 4:4–16. Plaintiff appealed Judge Mahan’s ruling dismissing his complaint, but the Ninth
19 Circuit found the appeal frivolous and later dismissed the appeal for Plaintiff’s failure to pay
20 the filing fee. See id., Dkt. Nos. 34, 35.

21 Defendants argue that in light of the Orleans case, the instant action is barred by claim
22 preclusion. (Mot. to Dismiss 11:22–23, ECF No. 5). Claim preclusion, also referred to as res
23 judicata, “provides that a final judgment on the merits bars further claims by parties or their
24 privies based on the same cause of action.” Tahoe–Sierra Pres. Counsel, Inc. v. Tahoe Reg’l
25 Planning Agency, 322 F.3d 1064, 1077 (9th Cir. 2003). “A final judgment on the merits of an

1 action precludes the parties or their privies form relitigating issues that were or could have been
2 raised in that action.” *Federated Dep ’t Stores, Inc. v. Moitie*, 453 U.S. 394, 398 (1981). “The
3 doctrine of res judicata is meant to protect parties against being harassed by repetitive actions.”
4 *Bell v. United States*, No. CV F 02–5077, 2002 WL 1987395, at *4 (E.D. Cal. June 28, 2002).

5 “Claim preclusion requires three things: (1) identity of claims; (2) a final judgment on
6 the merits; and (3) the same parties, or privity between the parties.” *Harris v. County of*
7 *Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012). Applying the three-part test, the Court holds that
8 claim preclusion applies to this matter. These suits are based on the same event—the seizure of
9 \$5,000.00 in gaming chips from the Orleans that were not returned to Plaintiff because they
10 were the subject the Interpleader Action. As in the Orleans case, Plaintiff asserts that the
11 seizure of gaming chips by Boyd and its employees violated his Fourth Amendment rights.
12 These same claims have already been dismissed by Judge Mahan. See *Federated Dep ’t Stores*,
13 452 U.S. at 399 n.3 (“The dismissal for failure to state a claim under Federal Rule of Civil
14 Procedure 12(b)(6) is a ‘judgment on the merits.’”). Finally, the parties in both cases are
15 identical except for Boyd. However, as Boyd’s subsidiary, the Orleans and Boyd are in privity
16 with each other. (See Compl. at 3); see also *Owens v. Kaiser Found. Health Plan, Inc.*, 244
17 F.3d 708, 713 (9th Cir. 2001). Moreover, “[a]n employer-employee relationship satisfies the
18 claim preclusion privity requirement.” *Chunhye Kim Lee v. Ariz. Bd. of Regents*, 633 F. App’x
19 453, 454 (9th Cir. 2016) (unpublished); see also *Knox v. Potter*, No. C-03-3638 MMC, 2004
20 WL 1091148, at *13 (N.D. Cal. May 4, 2004), aff’d, 131 F. App’x 567 (9th Cir. 2005).

21 Therefore, because the Court has already issued a judgment on the merits regarding
22 these parties, events, and causes of action, the Court holds that claim preclusion bars Plaintiff
23 from relitigating this matter. Plaintiff’s claims have already been rejected as frivolous by both
24 this District Court and the Ninth Circuit. Although Plaintiff may be dissatisfied with the results
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1 in the Orleans case, he is not entitled to endless bites at the same apple. The Court thus
2 dismisses Plaintiff's Complaint with prejudice.

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss, (ECF No. 5), is
5 **GRANTED**. Plaintiff's Complaint, (ECF No. 1-2), is **DISMISSED with prejudice**.

6 **IT IS FURTHER ORDERED** that all pending motions in this case are **DENIED as**
7 **moot**.

8 The Clerk of Court shall close the case.

9 **DATED** this 22 day of June, 2017.

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13 Gloria M. Navarro, Chief Judge
14 United States District Judge
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