

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KENNETH JENNINGS,

Plaintiff,

v.

SEATTLE HOUSING AUTHORITY,

Defendant.

CASE NO. C08-1820JLR

ORDER GRANTING
DEFENDANT’S MOTION TO
DISMISS AND/OR FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the court on Defendant Seattle Housing Authority’s (“SHA”) motion to dismiss and/or for summary judgment (Dkt. # 65). SHA first requests that the court dismiss Plaintiff Kenneth Jennings’s 42 U.S.C. § 1983 claim for failure to state a claim upon which relief can be granted or, alternatively, grant summary judgment. SHA next requests that the court dismiss Mr. Jennings’s remaining claims for lack of subject matter jurisdiction. Having considered the motion, as well as all papers filed in

1 support and opposition, as well as the balance of the record, and deeming oral argument
2 unnecessary, the court GRANTS the motion (Dkt. # 65) and ORDERS as follows:

3 (1) The court grants summary judgment in favor of SHA with respect to Mr.
4 Jennings's § 1983 claim; and

5 (2) The court declines under 28 U.S.C. § 1367(c)(3) to exercise supplemental
6 jurisdiction as to Mr. Jennings's remaining state-law claims, and dismisses these claims
7 without prejudice.

8 II. BACKGROUND

9 SHA is a public housing authority that provides rental housing and assistance to
10 over 26,000 individuals in Seattle, Washington. (LeBlanc Decl. (Dkt. # 66) ¶ 2.) SHA
11 operates multiple low-income public housing apartment buildings, including Bell Tower
12 Apartments ("Bell Tower"). Mr. Jennings is a resident of Bell Tower (*id.* ¶ 6) and a self-
13 described tenant rights activist seeking to promote tenant participation in the management
14 of low-income public housing (Jennings Decl., May 10, 2010 (Dkt. # 68) ¶ 15).

15 This lawsuit stems from an ongoing series of disputes between Mr. Jennings and
16 SHA employees. Mr. Jennings, proceeding *pro se* and *in forma pauperis*, filed his
17 original complaint in January 2009 and has since filed three amended complaints. (*See*
18 Dkt. ## 4, 5, 11, 31.) The operative complaint is now Mr. Jennings's third amended
19 complaint. (*See* 3d Am. Compl. (Dkt. # 31).) Although the third amended complaint
20 establishes the general framework for the parties and claims involved in this action, the
21 court is mindful that this action encompasses more than the limited set of facts alleged by
22 Mr. Jennings therein. This action does not, however, cover an unlimited scope. Because

1 Mr. Jennings is proceeding *pro se*, the court will construe his pleadings and briefing
2 liberally, *see Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001), but will not stretch
3 them beyond all recognition. To the extent Mr. Jennings wishes to pursue claims not
4 raised within the general scope of the third amendment complaint, he must do so
5 elsewhere.

6 **A. Tenant File**

7 Mr. Jennings initially filed suit in connection with the alleged disclosure of private
8 information in his tenant file maintained by SHA at Bell Tower. (*See generally* Compl.
9 (Dkt. # 4); Am. Compl. (Dkt. # 5).) Mr. Jennings states that he received a report that
10 Stephen Holiwell, the resident manager of Bell Tower, directed William Knight, another
11 tenant and a back-up assistant resident manager, to review Mr. Jennings's tenant file.
12 (Jennings Decl., Jan. 22, 2009 (Dkt. # 7) ¶ 10.) Mr. Jennings states that Nancy Dillon, a
13 tenant¹, told him that Mr. Knight had discussed his tenant file with Ms. Dillon while the
14 two were doing laundry together. (*Id.*) This distressed Mr. Jennings, and caused him
15 embarrassment and inconvenience. (*Id.* ¶ 12.) He filed an administrative complaint with
16 James Fearn, SHA's general counsel, about the incident. (*Id.* ¶ 13.) The administrative
17 complaint was dismissed. (*Id.* ¶ 14.)

18 **B. Election**

19 In early March 2009, after the filing of this lawsuit, Mr. Jennings became a
20 candidate in the election for Bell Tower resident council chairman. (Jennings Decl., Feb.

21
22 ¹ Ms. Dillon subsequently became a back-up assistant resident manager. (Jennings Decl.,
June 19, 2009 (Dkt. # 28-3) ¶ 18.)

1 11, 2010 (Dkt. # 57-4) ¶ 5.) Mr. Jennings alleges that SHA Property Manager Sarah Van
2 Cleve, as well as Ms. Dillon, at this time a back-up assistant resident manager, and Bell
3 Tower residents Leon Bailey, Andrea Carothers, and Robert Judy, threatened,
4 intimidated, and harassed him in an attempt to prevent him from being a candidate.
5 (Jennings Decl., June 19, 2009, ¶ 20.) Nevertheless, Mr. Jennings was elected as resident
6 council chairman on April 3, 2009. (Jennings Decl., June 24, 2009 (Dkt. # 29) ¶ 1.)

7 After the election, “SHA Property Management and support staff began an active
8 campaign to undermine [Mr. Jennings’s] position as Resident Council Chairman and to
9 intimidate tenants that supported [his] efforts.” (*Id.* ¶ 6.) Among other actions, SHA
10 refused to turn over the keys to the resident council office to Mr. Jennings (*id.* ¶ 7), did
11 not permit him access to the resident council bank account, debit card, and bulletin board
12 (*id.* ¶ 8), and suspended recognition of the resident council (*id.* ¶ 10). Mr. Jennings also
13 asserts that SHA employees threatened Bell Tower residents that they could lose their
14 housing if they associated with him. (*Id.* ¶ 15.)

15 Throughout the course of this lawsuit, Mr. Jennings refused to participate in his
16 annual review and disputed his monthly rent with Jake LeBlanc (Jennings Decl., Mar. 20,
17 2009 (Dkt. # 19) ¶¶ 3-20); received eviction notices (Jennings Decl., May 10, 2009, ¶
18 12); was sued in state court by Ms. Dillon (*id.*); and submitted numerous lease violation
19 and vandalism grievances to which SHA allegedly did not respond (*id.* ¶ 14). The court
20 has reviewed all of the declarations submitted in this action, but the details of many of
21 these incidents remain vague.

1 **C. Third Amended Complaint and Causes of Action**

2 In his third amended complaint, Mr. Jennings brings suit against both SHA and the
3 United States Department of Housing and Urban Development (“HUD”); he does not
4 name any individuals as defendants in this action.² In his first two causes of action, Mr.
5 Jennings alleges that SHA violated the First and Fourteenth Amendments to the United
6 States Constitution and violated 42 U.S.C. § 1983, respectively:

7 1. Defendant SHA through the acts of SHA Property Manager Sarah Van
8 Cleve violated the 1st amendments [sic] and 14th Amendments [sic] of the
9 United States Constitution by interfering with plaintiff’s right to be a
candidate for the Bell Tower Resident Council and to function as its elected
Chairman.

10 2. Defendant SHA through the acts of SHA Property Manager Sarah Van
11 Cleve violated 42 U.S.C. section 1983, the Federal Civil Rights Act of 1871
for interfering with plaintiff’s right to be [sic] candidate for the Bell Tower
12 Resident Council and to function as its elected Chairman.

13 (*Id.* at 6 ¶¶ 1-2.) Though pleaded as separate claims, the court will treat these claims as a
14 single § 1983 claim for alleged constitutional violations. Section 1983 creates a cause of
15 action for the vindication of federal rights, but does not establish substantive rights in and
16 of itself. *See Cholla Ready Mix, Inc. v. Civish*, 382 F.3d 969, 978 (9th Cir. 2004).

17 By its plain terms, Mr. Jennings’s § 1983 claim focuses on the acts of Ms. Van
18 Cleve in connection with his election to and functions as Resident Council Chairman.

19 (Third Am. Compl. at 6-7 ¶¶ 1-2.) Mr. Jennings, however, interprets his § 1983 claim to
20 encompass an expansive collection of constitutional rights and alleged regulatory

21 ² On December 31, 2009, Mr. Jennings filed a proposed complaint to add Ms. Van Cleve
22 as a defendant. (Dkt. # 55.) The parties, however, stipulated to strike the proposed complaint.
(Dkt. # 63.) The court approved the stipulation and struck the proposed complaint. (Dkt. # 64.)

1 standards of Rule 12(b)(6), especially in the face of numerous declarations and other
2 evidence submitted in the record.³ To do so would artificially constrict the focus of this
3 lawsuit. Furthermore, because both parties address SHA’s motion as a motion for
4 summary judgment, the court declines to provide an additional opportunity to present
5 material pertinent to the motion.

6 **B. Summary Judgment Standard**

7 Summary judgment is appropriate if “the pleadings, the discovery and disclosure
8 materials on file, and any affidavits show that there is no genuine issue as to any material
9 fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
10 56(c)(2); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. County of Los*
11 *Angeles*, 477 F.3d 652, 658 (9th Cir. 2007). The moving party bears the initial burden of
12 showing there is no genuine issue of material fact and that he or she is entitled to prevail
13 as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her
14 burden, then the non-moving party “must make a showing sufficient to establish a
15 genuine dispute of material fact regarding the existence of the essential elements of his
16 case that he must prove at trial” in order to withstand summary judgment. *Galen*, 477
17 F.3d at 658. The non-moving party “must present affirmative evidence to make this
18 showing.” *Id.* Furthermore, as the Ninth Circuit teaches, “[b]ald assertions that genuine

21 ³ SHA also suggests that the court may treat the motion as a motion for judgment on the
22 pleadings under Rule 12(c). (Reply (Dkt. # 69) at 1 n.1.) The court declines to do so for the
same reasons.

1 | issues of material fact exist are insufficient,” and a mere scintilla of evidence supporting
2 | a party’s position will not do. *Id.*

3 | **C. 42 U.S.C. § 1983 and Municipal Liability**

4 | A municipal entity, such as SHA, may be held liable under § 1983 when a
5 | governmental policy or custom causes the constitutional harm, but may not be held
6 | liable under *respondeat superior*. *Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 694
7 | (1978). A plaintiff may establish municipal liability by proving (1) “that a [municipal]
8 | employee committed the alleged constitutional violation pursuant to a formal
9 | governmental policy or a longstanding practice or custom which constitutes the standard
10 | operating procedure of the local governmental entity”; (2) “that the individual who
11 | committed the constitutional tort was an official with ‘final policy-making authority’ and
12 | that the challenged action itself thus constituted an act of official governmental policy”;
13 | or (3) “that an official with final policy-making authority ratified a subordinate’s
14 | unconstitutional decision or action and the basis for it.” *Gillette v. Delmore*, 979 F.2d
15 | 1342, 1346-47 (9th Cir. 1992) (quotations omitted); *see also Price v. Sery*, 513 F.3d 962,
16 | 966 (9th Cir. 2008). A municipality may also be held liable on a theory of deliberate
17 | indifference. *Christie v. Iopa*, 176 F.3d 1231, 1240 (9th Cir. 1999).

18 | SHA argues that summary judgment is appropriate as to Mr. Jennings’s § 1983
19 | claim because there is no basis upon which to hold SHA liable for the actions of Ms.
20 | Van Cleve or any other SHA employees or Bell Tower residents. SHA does not address
21 | the underlying merits of Mr. Jennings’s alleged constitutional violations, although it
22 | notes that it disputes these claims. (Reply at 4.) For purposes of this order, the court

1 will assume, without deciding, that the actions complained of by Mr. Jennings would be
2 sufficient to make out a viable constitutional claim. The court thus considers only the
3 more limited question: has Mr. Jennings met his burden to show that SHA can be held
4 liable for the actions of its employees and others under § 1983? The answer, on this
5 record, is no.

6 To begin with, Mr. Jennings does not specify in the third amended complaint on
7 what basis he believes SHA can be held liable under § 1983. Mr. Jennings focuses on
8 the actions of Ms. Van Cleve, but also identifies a range of other SHA employees and
9 Bell Tower tenants, including Mr. Bailey, Ms. Dillon, Mr. Fearn, Mr. Holiwell, Mr.
10 Judy, and Mr. Knight, who he contends have violated his constitutional rights. Yet Mr.
11 Jennings does not explain how the actions of these individuals are sufficient to expose
12 SHA to liability absent a *respondeat superior* theory. Notably, Mr. Jennings does not
13 allege that these individuals acted pursuant to an official SHA policy or a longstanding
14 SHA practice, does not allege that any of these individuals possess final policymaking
15 authority, does not allege that SHA employees with final policymaking authority
16 reviewed or approved of the actions described in the third amended complaint, and does
17 not allege deliberate indifference. It appears, rather, that Mr. Jennings seeks to hold
18 SHA liable under a *respondeat superior* theory in his third amended complaint.

19 In his briefing, Mr. Jennings identifies a broader range of individuals upon whose
20 actions he contends SHA may be held liable under § 1983. (Resp. at 20-21.) These
21 individuals include Mr. Bailey, Ms. Carothers, Ms. Dillon, Mr. Fearn, Mr. Holiwell, Mr.
22 Judy, Mr. Knight, Mr. LeBlanc, Ms. Van Cleve, and Ellen Ziontz. He asserts that the

1 evidence in the record is sufficient to give rise to a genuine issue of material fact as to
2 SHA's liability on, in essence, a pattern or practice theory. Mr. Jennings argues:

3 The evidence and material facts presented to the court could lead a trier of
4 fact to conclude that SHA's "policies and customs" authorized, approved
5 and encouraged (1) acts of serious hostility by employees and agents
6 toward tenants like Jennings who attempt to transform low income housing
7 Resident Councils into tenant rights organizations as authorized by the
8 Code of Federal regulations; and that (2) the systematic denial of grievance
9 and complaint procedures to address and resolve legitimate disputes,
although a separate Constitutional violation by itself, is one of the means by
which SHA authorizes, approves, and encourages unlawful conduct by staff
and the tenants who act with staff for some common purpose. It does so by
shielding and protecting tenants and SHA staff who act in unlawful ways to
undermine legitimate tenant rights oriented activities of the type Jennings
engaged in at Bell Tower Apartments.

10 (*Id.* at 22.)

11 1. Pattern or Practice

12 In order to establish municipal liability on a "pattern or practice" theory, a
13 plaintiff must demonstrate either a formal governmental policy or a "longstanding
14 practice or custom which constitutes the standard operating procedure of the local
15 governmental entity." *Gillette*, 979 F.2d at 1346. "Liability for improper custom may
16 not be predicated on isolated or sporadic incidents; it must be founded upon practices of
17 sufficient duration, frequency and consistency that the conduct has become a traditional
18 method of carrying out policy." *Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996).

19 The court finds that Mr. Jennings has not demonstrated that SHA may be held
20 liable under § 1983 on a pattern or practice theory of liability. First, Mr. Jennings has
21 not identified a formal SHA policy connected to the factual allegations of this case.
22 Second, Mr. Jennings has also not presented evidence that the actions complained of in

1 | this case arise from a longstanding practice or custom of SHA. Though Mr. Jennings
2 | identifies a range of actions taken by various SHA employees and Bell Tower residents,
3 | who Mr. Jennings characterizes as agents of SHA, these actions, without more, do not
4 | rise to a level of sufficient duration, frequency, and consistency so as to constitute
5 | SHA's "traditional method of carrying out policy." *Id.*

6 | Mr. Jennings argues that SHA, through its policies and practices, encourages its
7 | employees to oppose tenant activities aimed at organizing tenant resident councils.
8 | (Jennings Decl., May 10, 2010, ¶ 15.) Mr. Jennings's declaration, however, provides no
9 | specifics and remains too generalized to satisfy his burden on summary judgment.
10 | *Galen*, 477 F.3d at 658. Likewise, the court is not persuaded that the declaration of
11 | Mary Jo Cetak gives rise to a genuine issue of material fact as to pattern or practice.
12 | (*See Cetak Decl.* (Dkt. # 35-3).) Even accepting as true Ms. Cetak's statements
13 | regarding her three-year-old experiences at another SHA apartment complex, the court
14 | cannot extrapolate from those experiences for purposes of holding SHA liable in
15 | connection with Mr. Jennings's claims. Mr. Jennings has not submitted evidence to
16 | show that SHA's alleged actions with respect to Ms. Cetak were undertaken pursuant to
17 | a policy or practice of SHA, or that any of the same SHA employees are involved in this
18 | case.

19 | The court is also not persuaded that Mr. Jennings has submitted evidence to show
20 | that SHA systematically denies grievances. (Resp. at 23 (citing *Saxton v. Housing*
21 | *Authority of City of Tacoma*, 1 F.3d 881 (9th Cir. 1993).) This type of claim is not
22 | alleged by Mr. Jennings in his third amended complaint. Moreover, even if this claim

1 fell within the scope of this case, Mr. Jennings has not presented sufficient evidence to
2 show a genuine issue of material fact as to pattern or practice on this basis.

3 2. Official With Final Policymaking Authority

4 A municipal entity “can be liable for an isolated constitutional violation when the
5 person causing the violation has ‘final policymaking authority.’” *Christie*, 176 F.3d at
6 1235; *see Webb v. Sloan*, 330 F.3d 1158, 1164 (9th Cir. 2003). “Whether an official has
7 final policymaking authority is a question for the court to decide based on state law.”

8 *Christie*, 176 F.3d at 1235; *see Jett v. Dallas Indep. Sch. Dist.*, 491 U.S. 701, 737 (1989).

9 Here, the court finds that Mr. Jennings has not shown a genuine issue of material fact
10 regarding whether any of the SHA employees involved in the present dispute held final
11 policymaking authority. Mr. Jennings does not address this issue in his briefing,
12 pleadings, or evidence. The only evidence in the record that touches on this point,
13 however, cuts against Mr. Jennings. In his declaration, Mr. LeBlanc explains:

14 The Director of Housing Operations and a small number of other SHA
15 employees at the Director level, along with two Deputy Executive Directors
16 and SHA’s Executive Director, constitute SHA’s highest level of decision
17 makers. This is the group of employees at SHA that have the authority and
responsibility to establish policy for SHA, although they work with and
report regularly to SHA’s Board of Commissioners and they also accept
input from resident organizations.

18 (LeBlanc Decl. ¶ 4.) Mr. LeBlanc emphasizes that, by contrast, neither he nor Ms. Van
19 Cleve have the authority to establish official policy for SHA. (*Id.* ¶¶ 5-6.) On this
20 record, even viewing the evidence in the light most favorable to him, Mr. Jennings has
21 not established a genuine issue of material fact regarding whether any of the SHA
22 employees involved in this case acted with final policymaking authority.

1 3. Ratification

2 A municipal entity can be liable under § 1983 for an isolated constitutional
3 violation when an official with final policymaking authority ratifies a subordinate’s
4 decision, thereby approving the decision and the basis for it. *Fuller v. City of Oakland*,
5 47 F.3d 1522, 1534 (9th Cir. 1995); *see Christie*, 176 F.3d at 1238-39. “To show
6 ratification, a plaintiff must prove that the ‘authorized policymakers approve a
7 subordinate’s decision and the basis for it,’” *Christie*, 176 F.3d at 1239 (quoting *City of*
8 *St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988)), and that the policymaker’s decision
9 triggering liability was the product of a “conscious, affirmative choice” to ratify the
10 conduct at issue, *Gillette*, 979 F.2d at 1347. On this record, even viewing the evidence
11 in the light most favorable to Mr. Jennings, the court finds that Mr. Jennings has not
12 shown a genuine issue of material fact regarding whether any SHA employees with
13 official policymaking authority ratified the acts complained of in this case. Mr. Jennings
14 has submitted no evidence that a SHA employee with official policymaking authority
15 reviewed or approved any of the actions complained of by Mr. Jennings.

16 4. Deliberate Indifference

17 A municipal entity can be liable under § 1983 where its deliberate indifference
18 led to an omission that caused the employee to commit the constitutional violation.
19 *Gibson v. County of Washoe, Nev.*, 290 F.3d 1175, 1186 (9th Cir. 2002). “To prove
20 deliberate indifference, the plaintiff must show that the municipality was on actual or
21 constructive notice that its omission would likely result in a constitutional violation.” *Id.*
22 On this record, even viewing the evidence in the light most favorable to Mr. Jennings,

1 the court finds that Mr. Jennings has not shown a genuine issue of material fact
2 regarding deliberate indifference. He has submitted no evidence to demonstrate an
3 omission on the part of SHA or that SHA was on actual or constructive notice that such
4 an omission would likely result in a constitutional violation.

5 In light of the foregoing, the court concludes that Mr. Jennings has not established
6 a genuine issue of material fact that SHA may be held liable under § 1983 for the actions
7 complained of in this lawsuit. Therefore, the court grants summary judgment in favor of
8 SHA with respect to Mr. Jennings’s § 1983 claim.

9 **D. Supplemental Jurisdiction and Remaining Claims**

10 28 U.S.C. § 1367(c) provides that a district court may decline to exercise
11 supplemental jurisdiction over a claim if, *inter alia*, the district court “has dismissed all
12 claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). “To decline
13 jurisdiction under § 1367(c)(3), the district court must first identify the dismissal that
14 triggers the exercise of discretion and then explain how declining jurisdiction serves the
15 objectives of economy, convenience and fairness to the parties, and comity.” *Trs. of*
16 *Constr. Indus. & Laborers Health & Welfare Trust v. Desert Valley Landscape & Maint.*,
17 333 F.3d 923, 925 (9th Cir. 2003); *see Brady v. Brown*, 51 F.3d 810, 816 (9th Cir. 1995).

18 Here, the court finds that dismissal without prejudice of Mr. Jennings’s remaining
19 state-law claims is appropriate under § 1367(c)(3). The court’s decision to grant
20 summary judgment on Mr. Jennings’s § 1983 claim triggers its exercise of discretion
21 because this claim constituted the sole remaining claim over which the court exercised
22 original jurisdiction. Next, considering the factors of economy, convenience, fairness,

1 and comity, the court finds that they weigh in favor of dismissal. The parties have not
2 argued the merits of these claims and the court has not meaningfully considered them.
3 Further, the Washington courts possess greater experience in analyzing the statutory
4 claims raised by Mr. Jennings, particularly his RLTA claim, and hold a strong interest in
5 addressing them. The court also notes that it forewarned Mr. Jennings that dismissal of
6 these claims might be proper if all of his federal claims were dismissed. (*See* Dkt. 50.)
7 On this record, the court declines to exercise jurisdiction under §1367(c)(3) with respect
8 to Mr. Jennings's remaining state-law claims and dismisses them without prejudice to re-
9 filing in state court.

10 **V. CONCLUSION**

11 For the foregoing reasons, the court GRANTS SHA's motion to dismiss and/or for
12 summary judgment (Dkt. # 65). The court hereby ORDERS as follows:

13 (1) The court grants summary judgment in favor of SHA with respect to Mr.

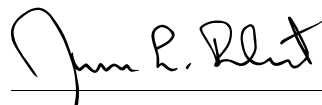
14 Jennings's § 1983 claim;

15 (2) The court declines under § 1367(c)(3) to exercise jurisdiction as to Mr.

16 Jennings remaining state-law claims and thus dismisses these claims without
17 prejudice; and

18 (3) The court directs the clerk to enter judgment in conformity with this order.

19 Dated this 11th day of June, 2010.

20 
21 _____
22 JAMES L. ROBERT
United States District Judge