

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jonathan Darosa v. Lowes Home Improvement

Darosa · No. 2:23-cv-00123-WBS-SCR · Decided February 21, 2025

SUMMARY

The document is findings and recommendations by a United States magistrate judge concerning Defendant Lowe’s Home Improvement’s renewed motion to dismiss one count of an eight-count state-law complaint. The court recommends denying dismissal of the plaintiff’s claim under California’s Tom Bane Civil Rights Act, concluding that allegations of physical force by store employees and coercive involvement with police were sufficient at the pleading stage. The court also recommends denying without prejudice the request to strike the prayer for attorney fees.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	February 21, 2025
DOCKET	2:23-cv-00123-WBS-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations on Defendant's renewed motion to dismiss under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the legal sufficiency of the complaint, accepts well-pleaded factual allegations as true, construes them in the plaintiff's favor, and disregards legal conclusions presented as factual allegations. The complaint must contain sufficient factual matter to state a facially plausible claim.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations of a federal magistrate judge, subject to review by the assigned district judge.

TOPICS

- motions to dismiss
- civil rights
- civil procedure
- police misconduct
- attorney fees

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Plaintiff's allegations that Lowe's employees physically assaulted him before police arrived and then supplied allegedly false information to police sufficiently alleged threats, intimidation, or coercion beyond the coercion inherent in a detention or search under California Civil Code section 52.1.
2. Whether Plaintiff's request for attorney fees should be stricken because he was proceeding pro se.

HOLDINGS

1. The allegations that Lowe's employees knocked Plaintiff to the ground, battered or violently attacked him, and were present when police arrived were sufficient at the pleading stage to allege coercion independent of the coercion inherent in the alleged detention and search. The motion to dismiss the Bane Act claim should therefore be denied.
2. The request for attorney fees should not be stricken at the pleading stage and should be denied without prejudice because Plaintiff had previously been represented by counsel and indicated that he might retain counsel again.

KEY QUOTATIONS

“When a search or seizure is at the heart of a Bane Act claim, as it is here, the framework is clear. “[A] plaintiff in a search-and-seizure case must allege threats or coercion beyond the coercion inherent in a detention or search in order to recover under the Bane Act.”” (at 5)

“At this preliminary pleading stage, Plaintiff’s allegations are sufficient to state a Bane Act claim.” (at 6)

FACTUAL BACKGROUND

Plaintiff alleged that while he was a customer at a Lowe's store, loss-prevention personnel stopped and detained him on suspicion of shoplifting. He alleged that store employees knocked him to the ground, battered or violently attacked him, made false statements to police, and requested that he and his primary transportation be searched. Police arrived, reviewed video, and determined that Plaintiff had not stolen anything. The Bane Act claim was based on the alleged physical coercion and the employees' communications with police.

PROCEDURAL HISTORY

Plaintiff filed suit in California state court, amended his complaint twice, and Defendant removed the action to federal court on diversity grounds. The operative second amended complaint asserts eight state-law causes of action, including a claim under California's Tom Bane Civil Rights Act. Defendant moved to dismiss only the Bane Act claim. The magistrate judge recommends denying the motion and denying without prejudice Defendant's request to strike Plaintiff's attorney-fee request; the recommendation was subject to objections and review by the assigned district judge.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The magistrate judge recommended that the assigned district judge deny Defendant's renewed motion to dismiss and deny without prejudice the request to strike the attorney-fee prayer. The parties were directed to file objections within fourteen days.

CASES CITED

- N. Star Int'l v. Ariz. Corp. Comm'n, 720 F.2d 578, 581 (9th Cir. 1983)
- Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Walker v. Fred Meyer, Inc., 953 F.3d 1082, 1086 (9th Cir. 2020)
- Paulsen v. CNF, Inc., 559 F.3d 1061, 1071 (9th Cir. 2009)
- Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983)
- Gomez v. City of Vacaville, 483 F. Supp. 3d 850, 870 (E.D. Cal. 2020)
- Peralta v. United States, 475 F. Supp. 3d 1086, 1097 (C.D. Cal. 2020)
- Lyall v. City of Los Angeles, 807 F.3d 1178, 1196 (9th Cir. 2015)
- Bender v. County of Los Angeles, 217 Cal. App. 4th 968 (Cal. Ct. App. 2013)
- Jones v. Kmart Corp., 17 Cal. 4th 329, 331-334 (1998)
- Van v. Wal-Mart Stores, Inc., 583 F. App'x 761, 763 (9th Cir. 2014)
- Kay v. Ehrler, 499 U.S. 432, 435 (1991)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(PS) Darosa v. Lowes Home Improvement

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 JONATHAN DAROSA, No. 2:23-cv-00123-WBS-SCR

12 Plaintiffs,

13 v. FINDINGS AND RECOMMENDATIONS

14 LOWES HOME IMPROVEMENT,

15 Defendant. 16

17 Plaintiff proceeds pro se in this matter, which is referred to the undersigned pursuant to 18

Local Rule 302(c)(21). Before the Court is Defendant's Motion to Dismiss (ECF No. 21) which seeks to dismiss one count of an eight-count complaint. The Court recommends that the Motion to Dismiss be DENIED. By separate order, the Court will direct the parties to file status reports and set this matter for scheduling conference.

I. Background and Procedural History

Plaintiff, represented by counsel at the time, commenced this action in California state court on June 30, 2022. ECF No. 1 at 2. Plaintiff filed a first amended complaint (FAC) on July 25, 2022, and a second amended complaint (SAC) in September 2022. Defendant removed the action to this Court on January 20, 2023, on the basis of diversity of citizenship jurisdiction. ECF No. 1. The operative complaint is the SAC, which is in the record at Exhibit E to the Notice of Removal. ECF No. 1-5.

1 The SAC asserts eight causes of action based on state law: 1) negligent supervision; 2) negligent infliction of emotional distress; 3) battery; 4) negligent hiring; 5) false imprisonment; 6) false light invasion of privacy; 7) defamation; and 8) violation of the Tom Bane Civil Rights Act, 4 Cal.Civ.Code § 52.1. ECF No. 1-5. Plaintiff alleges that on March 31, 2022, he was a customer in a Lowe's store and that he was stopped and detained by loss prevention personnel on suspicion of shoplifting. Id. at 4.1 Plaintiff alleges he was "accosted" and "knocked to the ground and battered." Id. at 5. Plaintiff claims that Roseville police were called to the scene and reviewed videotape and determined that Plaintiff had not stolen any items. Id. at ¶ 14. Plaintiff alleges Defendant's employees made false statements and requested that Plaintiff "and his primary mode of transportation be subject to search and seizure in violation of his right to be free from restraint and arbitrary detention." Id. at ¶ 83.

12 Defendant filed a motion to dismiss on January 27, 2023. ECF No. 9. Plaintiff's counsel filed a motion to withdraw on February 22, 2023. ECF No. 13. Counsel was allowed to withdraw on April 4, 2023, and as Plaintiff was proceeding pro se the matter was referred to Magistrate Judge Barnes. ECF No. 19. Magistrate Judge Barnes expressed concern that counsel had withdrawn due to health reasons, and it appeared Plaintiff was incarcerated and may not have been aware of the motion. ECF No. 20. Judge Barnes denied the motion to dismiss without prejudice to renewal. ECF No. 20. Defendant filed a renewed motion on September 15, 2023. ECF No. 21. Plaintiff filed two untimely opposition briefs (ECF Nos. 30 & 31)² and Defendant filed a reply (ECF No. 32). Magistrate Judge Barnes took the motion under submission on January 17, 2024, and the matter was reassigned to the undersigned on August 6, 2024. ECF Nos. 35 & 37. Defendant's motion to dismiss seeks dismissal of only one of the eight counts.

II. Legal Standard on a Motion to Dismiss under Rule 12(b)(6)

24 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983).

26 1 Page references are to the page number generated by the Court's CM/ECF system and appearing on the upper right corner of the page. 2 It appears Plaintiff's opposition brief was for some reason filed three times. ECF Nos. 30, 31, 28 & 33. 1 "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*,

901 F.2d 696, 699 3 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to relief that is 4 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial 5 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable 6 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 7 678 (2009). 8 In determining whether a complaint states a claim on which relief may be granted, the court 9 accepts as true all well-pleaded factual allegations in the complaint and construes the allegations in 10 the light most favorable to the plaintiff. *Walker v. Fred Meyer, Inc.*, 953 F.3d 1082, 1086 (9th Cir. 11 2020). However, the court need not assume the truth of legal conclusions cast in the form of factual 12 allegations. *Paulsen v. CNF, Inc.*, 559 F.3d 1061, 1071 (9th Cir. 2009). While Rule 8(a) does not 13 require detailed factual allegations, “it demands more than an unadorned, the-defendant- 14 unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A pleading is insufficient if it offers 15 mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” 16 *Twombly*, 550 U.S. at 555; see also *Iqbal*, 556 U.S. at 678 (“Threadbare recitals of the elements of 17 a cause of action, supported by mere conclusory statements, do not suffice.”). It is inappropriate to 18 assume that the plaintiff “can prove facts that it has not alleged or that the defendants have violated 19 the ... laws in ways that have not been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. 20 State Council of Carpenters*, 459 U.S. 519, 526 (1983). 21 III. Analysis 22 Defendant moves to dismiss Plaintiff’s eighth cause of action alleging violation of 23 California’s Tom Bane Civil Rights Act (“Bane Act”) (Cal. Civil Code § 52.1). ECF No. 21 at 1- 24 2. Defendant contends that the Bane Act claim is premised entirely on communications between 25 Defendant’s employees and the police and does not state a claim. 26 Plaintiff’s opposition (ECF No. 31) states it was prepared pro se and he did not have access 27 to the complaint while drafting it. Large portions are scribbled out. See ECF No. 31 at 2, 4, 6, 8, 28 10, 12, & 14. Plaintiff states that the Lowes’ employees engaged in coercion by making false 1 statements to police which directly led to a violation of his Fourth Amendment rights by the police.

2 *Id.* at 3. Plaintiff argues this is not a “speech alone” case falling under California Civil Code § 3 52.1(k) but is rather a coercion case. *Id.* at 13. Plaintiff states he wishes to reserve the right to seek 4 attorney’s fees because although he is currently pro se he “is in the process of trying to obtain a 5 new attorney.” 3 *Id.* In Reply, Defendant argues that the Bane Act claim must fail because Plaintiff 6 has not alleged that its employees’ speech threatened violence against Plaintiff. ECF No. 32 at 9. 7 The Bane Act provides a cause of action for violations of a plaintiff’s state or federal civil 8 rights committed by threats, intimidation, or coercion. See Cal. Civil Code § 52.1(b) & (c); *Gomez 9 v. City of Vacaville*, 483 F.Supp.3d 850, 870 (E.D. Cal. 2020). A private actor can be held liable 10 for violations of the Bane Act committed by its employees. *Peralta v. United States*, 475 F.Supp.3d 11 1086, 1097 (C.D. Cal. 2020). A plaintiff in a search-and-seizure case must allege threats or 12 coercion beyond the coercion inherent in a detention or search in order to recover under the Bane 13 Act. *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1196 (9th Cir. 2015).

14 In seeking to dismiss the Bane Act claim, Defendant relies on § 52.1(k), which provides 15 that
“[s]peech alone is not sufficient to support an action” under § 52.1(b) or (c). Plaintiff does not 16
dispute that Defendant’s employees communicated with law enforcement which caused an arrest
17 and detention (which communication constituted speech), but Plaintiff also alleges that prior to
18 police arriving he had been “knocked to the ground and battered” and “violently attacked” by
store 19 employees, and that a store employee who attacked him was “in the immediate vicinity”
when 20 police arrived. ECF No. 31 at 5, 13. Thus, Plaintiff argues this is not a speech alone case,
but a 21 case about coercion. 22 When a search or seizure is at the heart of a Bane Act claim, as it
is here, the framework is 23 clear. “[A] plaintiff in a search-and-seizure case must allege threats or
coercion beyond the 24 coercion inherent in a detention or search in order to recover under the
Bane Act.” Lyall, 807 F.3d 25 at 1196. Excessive force can constitute that additional coercion.
“Where, as here, an arrest is 26 unlawful and excessive force is applied in making the arrest, there
has been coercion independent 27 3 This statement was made in a filing in January 2024 and no
counsel has since appeared for 28 Plaintiff. 1 from the coercion inherent in the wrongful detention
itself—a violation of the Bane Act.” Id., citing 2 *Bender v. County of Los Angeles*, 217
Cal.App.4th 968 (Cal. Ct. App. 2013) (internal quotation and 3 citation omitted). 4 Defendant also
relies on *Jones v. Kmart Corp.*, 17 Cal.4th 329 (Cal. 1998), to argue that 5 Plaintiff’s Bane Act
claim fails no matter how rough private loss prevention employees might have 6 been with
Plaintiff prior to the arrival of police. ECF No. 21 at 15. In *Jones*, the California Supreme 7 Court
found the claim failed for lack of state action: “When they assert that defendants interfered 8 with
those rights by directly violating them, they are mistaken: Only the government or its agents 9 can
do so.” Id. at 334. In *Jones*, Kmart security guards arrested the plaintiff, used handcuffs, and 10
searched him. Id. at 331-32. The police were not involved, and thus there was not the state action
11 necessary for a Fourth Amendment violation. The *Jones* court acknowledged the situation
would 12 be different if the police were called: “Those rights were not put in jeopardy in this
dispute, as they 13 might have been if defendants had called the police and then coercively
interfered with Jone’s 14 Fourth Amendment rights when he attempted to exercise them against
police.” Id. at 334. 15 Plaintiff’s argument appears to be that both the earlier assault by
Defendant’s employee and 16 Defendant’s employee providing false information to the police had
a coercive effect on depriving 17 him of his constitutional rights. 18 At this preliminary pleading
stage, Plaintiff’s allegations are sufficient to state a Bane Act 19 claim. See *Van v. Wal-Mart
Stores, Inc.*, 583 F.App’x 761, 763 (9th Cir. 2014) (finding that 20 “construed liberally” plaintiff
stated a Bane Act claim against Wal-Mart’s security guards who had 21 detained her and “used
threats of violence to accomplish their purposes”). 22 Defendant also requests the Court strike the
request for attorney fees, on the basis that the 23 Bane Act claim is insufficient, but also because
Plaintiff is proceeding pro se. It is generally true 24 that a pro se litigant cannot recover attorney
fees. See, e.g., *Kay v. Ehrler*, 499 U.S. 432, 435 (1991) 25 (“The Circuits are in agreement,
however, on the proposition that a pro se litigant who is not a 26 lawyer is not entitled to attorney’s

fees [under 42 U.S.C. § 1988].”). However, in this action 27 Plaintiff was initially represented by counsel, and has stated he may again retain counsel. It would 28 be premature to strike the request for attorney fees at this time, and the Court recommends 1 | Defendant’s request to strike the prayer for attorney fees be denied without prejudice.

2 IV. CONCLUSION

3 For the foregoing reasons, IT IS HEREBY RECOMMENDED: 4 Defendant’s Motion to Dismiss (ECF No. 21), which seeks to dismiss one of the eight 5 | counts of the SAC, be DENIED. 6 These findings and recommendations will be submitted to the United States District Judge 7 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 8 | after being served with these findings and recommendations, either party may file written 9 || objections with the court. The document should be captioned “Objections to Magistrate Judge's 10 | Findings and Recommendations.” The parties are advised that failure to file objections within the 11 | specified time may result in waiver of the right to appeal the district court’s order. Martinez v. 12 | Yist, 951 F.2d 1153 (9th Cir. 1991). 13 | DATED: February 21, 2025 14 4 mk

15 SEAN C. RIORDAN

UNITED STATES MAGISTRATE JUDGE

16 17 18 19 20 21 22 23 24 25 26 27 28