

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Bailey v. County of Stanislaus

Bailey · No. 2:24-cv-03231-JAM-AC · Decided July 8, 2025

OPINION

Bailey v. County of Stanislaus

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

7 EASTERN DISTRICT OF CALIFORNIA

8

9 DAVID MICHAEL BAILEY, No. 2:24-cv-03231-JAM-AC

10 Plaintiff,

11 v. ORDER GRANTING MOTIONS TO

DISMISS

12 COUNTY OF STANISLAUS; DEPUTY

LARSON; DEPUTY ROSE; DEPUTY

13 GARCIA; CITY OF TURLOCK; DOE

ONE; and DOES 2 through 10, 14 inclusive. 15 Defendants. 16 17 In this action, David Bailey (“Plaintiff”) brings claims 18 under Section 1983 and state law against the City of Turlock 19 (“the City”), including City officer Doe 1, and the County of 20 Stanislaus (“the County”), including County Deputies Larson, 21 Rose, and Garcia. Before the Court are two motions to dismiss. 22 First, the County and Deputies Larson, Rose, and Garcia move to 23 dismiss for failure to state a claim (hereinafter, “the County 24 Motion”). County Mot., ECF No. 24. Plaintiff opposed, and the 25 County replied. See County Opp’n, ECF No. 28; County Reply, ECF

26 No. 30. Second, the City moves to dismiss for failure to state a

27 claim (hereinafter, “the City Motion”). City Mot., ECF No. 27. 28 Plaintiff opposed, and the City replied. City Opp’n, ECF No. 31; 1 City Reply, ECF No. 32. For the following reasons, the County’s 2 motion is granted with leave to amend and the City’s motion is 3 granted without leave to amend.¹

4 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

5 This controversy arises out of the police shooting of 6 Plaintiff’s nephew, Kevin Frey. See First Amended Complaint 7 (“FAC”) ¶ 1, ECF No. 21. Plaintiff filed his complaint (“the 8 Complaint”) as Mr. Frey’s successor in interest, bringing causes 9 of action under 42 U.S.C. Section 1983 and state law. See id. at 10 1. Plaintiff alleges that Mr. Frey’s mother, Judy Frey, was Mr. 11 Frey’s

successor in interest at the time of his death, and that 12 because Ms. Frey has since died, and Plaintiff is Ms. Frey's 13 successor in interest, Plaintiff is now also Mr. Frey's successor 14 in interest. See *id.* ¶¶ 4, 8. 15 The Court previously granted a motion to dismiss brought by 16 the County. Order, ECF No. 20. The Court granted Plaintiff 17 leave to amend to plead facts giving rise to his standing as Mr. 18 Frey's successor in interest. *Id.* Plaintiff then brought his 19 amended complaint, bringing seven claims: (1) excessive force 20 under Section 1983 against Deputies Larson, Rose, and Doe 1; 21 (2) false arrest and detention under Section 1983 against 22 Deputies Rose, Larson, Garcia, Doe 1, and the County; (3) due 23 process violation under Section 1983 against Deputies Larson, 24 Rose, and Doe 1; (4) municipal liability under Section 1983 25 against the County and the City; (5) battery against Deputy 26 1These motions were determined to be suitable for decision 27 without oral argument. E.D. Cal. L.R. 230(g). The hearing for the County's motion was scheduled for July 1, 2025, and the 28 hearing for the City's motion was scheduled for July 15, 2025. 1 Larson and the County; (6) negligence against all defendants; and 2 (7) violation of the Bane Act against all defendants. See FAC 3 ¶¶ 67-143. 4 The County now moves to dismiss all claims brought against 5 it and its Deputies, arguing that Plaintiff still has not 6 adequately pled his standing to bring this action as Mr. Frey's 7 successor in interest. County Mot. at 3-5. Plaintiff responds 8 that an amendment of his complaint would cure the defects 9 identified by the County. County Opp'n at 3. 10 The City moves to dismiss the three claims that Plaintiff 11 brought against it, arguing that Plaintiff cannot plausibly state 12 any claim. City Mot. at 4-7. Plaintiff responds that it has 13 sufficiently pled two of the claims. See generally City Opp'n.

14 II. OPINION

15 A. Legal Standard 16 A Rule 12(b)(6) motion challenges the sufficiency of a 17 complaint for "failure to state a claim upon which relief can be 18 granted." Fed. R. Civ. P. 12(b)(6). "To survive a motion to 19 dismiss [under 12(b)(6)], a complaint must contain sufficient 20 factual matter, accepted as true, to state a claim to relief 21 that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 22 662, 678 (2009) (internal quotation marks and citation omitted). 23 Plausibility requires "factual content that allows the court to 24 draw the reasonable inference that the defendant is liable for 25 the misconduct alleged." *Id.* While "detailed factual 26 allegations" are unnecessary, the complaint must allege more 27 than "[t]hreadbare recitals of the elements of a cause of 28 action, supported by mere conclusory statements." *Id.* 1 Conclusory allegations are not to be considered in the 2 plausibility analysis. *Id.* at 679 ("While legal conclusions can 3 provide the framework of a complaint, they must be supported by 4 factual allegations."). When a plaintiff fails to "state a 5 claim upon which relief can be granted," the Court must dismiss 6 the claim. Fed. R. Civ. P. 12(b)(6). A complaint may be 7 dismissed for failure to adequately allege a plaintiff's 8 standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 9 (1992). 10 B. The County's Motion to Dismiss 11 "The party seeking to bring a survival action bears the 12 burden of demonstrating that a particular state's law authorizes 13 a survival action and that the plaintiff

meets that state's 14 requirements for bringing a survival action." *Moreland v. Las Vegas Metro. Police Dep't*, 159 F.3d 365, 369 (9th Cir. 1998). 16 In California, Civil Procedure Code Section 377.32 provides that 17 a person seeking to commence an action as a decedent's successor 18 in interest must show "facts in support" of the conclusion that 19 they are the "decedent's successor in interest." Cal. Civ. 20 Proc. Code § 377.32. Accordingly, "most federal courts to have 21 confronted the issue have found that plaintiffs must satisfy the 22 procedural requirements of section 377.32." *Anderson v. Hickman*, No. CIV. S-07-1466 LKK/DAD, 2008 WL 2397470, at *1 24 (E.D. Cal. June 11, 2008) (collecting cases). 25 In the Complaint, Plaintiff alleges that Ms. Frey was Mr. 26 Frey's successor in interest because Mr. Frey had no will, was 27 unmarried, had no children, and his father predeceased him. FAC 28 ¶ 10. Under California Probate Code Section 6402, Ms. Frey 1 would be Mr. Frey's successor in interest under these alleged 2 facts because she was his mother. See Cal. Prob. Code § 6402(b). Accordingly, Plaintiff adequately alleges that Ms. 4 Frey was Mr. Frey's successor in interest. 5 However, Plaintiff does not plausibly show that he is Ms. 6 Frey's successor in interest. Plaintiff pleads that Ms. Frey 7 had no will, no surviving children, her parents were 8 predeceased, and her spouse was predeceased. FAC ¶ 12. Under 9 the Probate Code, however, a decedent's estate passes first to 10 their "issue," which includes all decedents of all generations. 11 Cal. Prob. Code §§ 50, 6402(a). Accordingly, while Plaintiff 12 pleads Ms. Frey did not have any surviving children, his 13 allegations do not foreclose the possibility that she had other 14 surviving issue, such as grandchildren. Because Plaintiff's 15 allegations do not support that he is the "decedent's successor 16 in interest," the Complaint must be dismissed. See Cal. Civ. 17 Proc. Code § 377.32; Fed. R. Civ. P. 12(b)(6); *Lujan*, 504 U.S. 18 at 561. 19 The Court grants leave to amend as to all claims against 20 the County because Plaintiff could plead factual allegations 21 showing he has standing to bring this action. See *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 23 2003). Indeed, attached to his opposition brief, Plaintiff 24 submitted a proposed amended complaint that seemingly cures the 25 deficient allegations regarding his status as Ms. Frey's 26 successor in interest, as Plaintiff seeks to allege that Ms. 27 Frey had no surviving issue when she died. See Proposed Second 28 Amended Complaint ¶ 13, ECF No. 28-2. 1 C. The City's Motion to Dismiss 2 The City asks the Court to dismiss the following three 3 claims 4 : (1) municipal liability under Section 1983; (2) negligence; 5 and (3) violation of the Bane Act. The Court addresses these 6 claims in turn. 7 1. Municipal Liability 8 The Fourth Cause of Action alleges that the City is liable 9 under Section 1983 for excessive force of its officers on the 10 basis of failure to train, unconstitutional custom and practice, 11 and ratification. FAC ¶¶ 99-114. To establish a Monell claim 12 for excessive force against a municipality, a plaintiff must 13 first establish that the municipality's officer violated the 14 plaintiff's constitutional rights. *Lockett v. Cnty. of Los Angeles*, 977 F.3d 737, 742 (9th Cir. 2020). In the Complaint, 16 Plaintiff does not plead that a City officer violated Mr. Frey's 17 constitutional rights. Rather, this cause of action focuses 18 entirely on the actions of the County's Deputies. See FAC 19 ¶¶ 99-114. As such, this claim must be dismissed. 20 Confusingly,

Plaintiff argues that he has not alleged a 21 Monell claim against the City, and that the City's motion should 22 therefore be denied as moot as to this claim. See City Opp'n at 23 6. But the title of Plaintiff's Fourth Cause of Action clearly 24 identifies the City as a defendant. FAC at 13. To add to the 25 confusion, Plaintiff spends much of his opposition brief arguing 26 that Doe 1, a City police officer, should be held liable for 27 failure to intervene. City Opp'n at 3-6. However, the City is 28 not asking for any claim brought against Doe 1 to be dismissed, 1 and Plaintiff does not argue that the City is liable for the 2 actions of Doe 1. Accordingly, the Court disregards this 3 argument for purposes of this motion. 4 The Court denies leave to amend as to this claim. Because 5 Plaintiff states that it "has not alleged a Monell claim 6 against" the City, the Court concludes amendment is unnecessary. 7 2. Negligence 8 The Sixth Cause of Action alleges that the City is 9 vicariously liable for Doe 1's negligence in not releasing a K9 10 to attack Mr. Frey; Plaintiff alleges that had Doe 1 released 11 the K9, Mr. Frey would not have been shot. FAC ¶¶ 121-136. To 12 establish a negligence claim, a plaintiff must show: (1) an 13 individual had a legal duty to use due care; (2) the individual 14 breached that legal duty; and (3) the breach was the proximate 15 or legal cause of the resulting injury. *Ladd v. Cnty. of San 16 Mateo*, 12 Cal. 4th 913, 917 (1996). In California, "there is no 17 duty owed by police to individual members of the general public 18 because a law enforcement officer's duty to protect the 19 citizenry is a general duty owed to the public as a whole. 20 Therefore, absent a special relationship or a statute creating a 21 special duty, the police may not be held liable for their 22 failure to provide protection." *Alejo v. City of Alhambra*, 75 23 Cal. App. 4th 1180, 1185 (1999) (citation omitted), disapproved 24 of on other grounds by *B.H. v. Cnty. of San Bernardino*, 62 Cal. 25 4th 168 (2015). 26 Plaintiff's negligence claim fails as a matter of law. 27 Because Doe 1 did not owe Mr. Frey a legal duty, Doe 1 cannot be 28 held liable for negligence, and the City therefore cannot be 1 held vicariously liable. In his opposition brief, Plaintiff 2 argues that Doe 1 did have a duty of care, relying on *Hayes v. 3 County of San Diego*, 57 Cal. 4th 622 (2013). But in *Hayes*, the 4 California Supreme Court held that police officers "have a duty 5 to act reasonably when using deadly force." 57 Cal. 4th at 629 6 (emphasis added). Plaintiff does not allege that Doe 1 used 7 deadly force. On the contrary, Plaintiff only alleges that Doe 8 1 did not release a K9 on Mr. Frey. Moreover, Plaintiff alleges 9 that Deputy Larson was the officer who used deadly force when he 10 shot and killed Mr. Frey. FAC ¶ 27. 11 The Court denies leave to amend as to this claim. Because 12 Plaintiff does not sufficiently allege — or persuasively argue 13 in his briefing — that Doe 1 owed Mr. Frey a duty of care, 14 amendment would be futile because Plaintiff cannot establish 15 that the City is vicariously liable for any negligence on the 16 part of its officers. 17 Moreover, though the City only seeks dismissal of this 18 claim against itself, the Court sua sponte dismisses this claim 19 against Doe 1 because, as explained above, Plaintiff cannot 20 possibly succeed on this claim as to Doe 1. See *Omar v. Sea- 21 Land Serv., Inc.*, 813 F.2d 986, 991 (9th Cir. 1987) ("A trial 22 court may dismiss a claim sua sponte under Fed. R. Civ. P. 23 12(b)(6). [citation] Such a dismissal may be made without notice 24 where the claimant cannot possibly win relief."). 25 3. Bane Act

26 The Seventh Cause of Action alleges that all defendants, 27 including the City, violated the Bane Act. FAC ¶¶ 137-143. The 28 Bane Act protects the exercise of constitutional or statutory 1 rights against interference or attempted interference by means 2 of “threat, intimidation, or coercion.” Cal. Civ. Code 3 § 52.1(b). “The essence of a Bane Act claim is that the 4 defendant, by the specified improper means (i.e., ‘threats, 5 intimidation or coercion’), tried to or did prevent the 6 plaintiff from doing something he or she had the right to do 7 under the law or to force the plaintiff to do something that he 8 or she was not required to do under the law.” Austin B. v. 9 Escondido Union Sch. Dist., 149 Cal. App. 4th 860, 883 (2007) 10 (citation omitted). 11 As the City points out, the Complaint is silent as to any 12 facts demonstrating that the City or Doe 1 threatened, 13 intimidated, or coerced Mr. Frey. See City Mot. at 7. The only 14 relevant allegation Plaintiff pleads is that Doe 1 “attempted to 15 interfere and did interfere with Mr. Frey’s right to be free 16 from unreasonable seizures by breaching his duty of care to Mr. 17 Frey.” FAC ¶ 142. This is a legal conclusion, which the Court 18 is not bound to accept as true. See *Iqbal*, 556 U.S. at 679. 19 In his brief, Plaintiff argues that he satisfied the 20 pleading requirements of a Bane Act claim, relying on *Cornell v. 21 City & County of San Francisco*, 17 Cal. App. 5th 766 (2017). 22 City Opp’n at 10. But in *Cornell*, the court held that “the use 23 of excessive force can be enough to satisfy the ‘threat, 24 intimidation or coercion’ element of” the Bane Act. 17 Cal.

25 App. 5th at 799 (emphasis added). Plaintiff does not allege 26 that any City officer used excessive force. Because Plaintiff 27 does not meet the pleading requirements as to the City, this 28 claim fails. 1 The Court finds that amendment would be futile because 2 Plaintiff cannot plausibly plead that a City officer violated 3 the Bane Act. Plaintiff clearly alleges that the County 4 Deputies, not the City officers, were the ones who used 5 excessive force. See FAC ¶¶ 27, 110, 116. Indeed, the crux of 6 Plaintiff’s argument is that Doe 1 failed to intervene, which 7 necessarily means Doe 1 did not use any force on Mr. Frey. See 8 City Opp’n at 3-6. Because Plaintiff cannot show that a City 9 officer used excessive force, he cannot establish a violation of 10 the Bane Act. See *Cornell*, 17 Cal. App. 5th at 799. 11 Accordingly, the Court denies leave to amend as to this claim. 12 Moreover, just as with the negligence claim, the Court sua 13 sponte dismisses this claim against Doe 1 because Plaintiff 14 cannot possibly establish that Doe 1 violated the Bane Act. See 15 *Omar*, 813 F.2d at 991.

16 III. ORDER

17 For the reasons stated above, the County’s Motion to Dismiss 18 at ECF No. 24 is GRANTED WITH LEAVE TO AMEND and the City’s 19 Motion to Dismiss at ECF No. 27 is GRANTED WITHOUT LEAVE TO 20 AMEND. 21 Specifically, in his amended Complaint, Plaintiff may plead 22 facts giving rise to his standing as Mr. Frey’s successor in 23 interest. He may not bring any claims against the City, as all 24 three claims brought against it in the First Amended Complaint 25 are dismissed with prejudice. Plaintiff also cannot bring a 26 negligence or Bane Act claim against the City officer identified 27 as Doe 1 in the First Amended Complaint. Finally, Plaintiff may 28

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1 not add any new claims or theories of liability without prior 2 authorization from the Court. 3 If Plaintiff elects to file an Amended Complaint, he must do 4 so within twenty (20) days of this Order. The County and its 5 | deputies shall file their response to the Amended Complaint 6 | within twenty (20) days thereafter. 7 IT IS SO ORDERED. 8 Dated: July 7, 2025 . SM is

JOHN A. MENDEZ

11 SENIOR UNITED*STATES DISTRICT JUDGE

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