

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

Guyton v. City of Stockton

No. 2:24-cv-0922 DC AC PS (E.D. Cal. Feb. 19, 2025) · No. No. 2:24-cv-0922 DC AC PS · Decided February
20, 2025

SUMMARY

The document is an order and findings and recommendations by a magistrate judge in a pro se civil-rights action against the City of Stockton, its police department, and two officers. It recommends granting defendants' Rule 12(b)(6) motion to dismiss the Second Amended Complaint, with leave to file a Third Amended Complaint on most claims, but without leave to amend the First and Fifth Amendment claims. It also denies plaintiff's motion to compel discovery and for sanctions without prejudice as premature.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ANTONIO GUYTON, No. 2:24-cv-0922 DC AC PS 12 Plaintiff, 13 v.
ORDER and 14 CITY OF STOCKTON, STOCKTON FINDINGS AND RECOMMENDATIONS
POLICE DEPARTMANT, VINCENT 15 MAGANA, COURTLYN CHAPPELL, 16 Defendants.
17 18 Plaintiff is proceeding in this matter pro se, and pre-trial proceedings are accordingly 19
referred to the undersigned pursuant to Local Rule 302(c)(21).

Before the court is a motion to 20 dismiss filed by all defendants on December 3, 2024. ECF No.
13 (memorandum filed at ECF 21 No. 14). Plaintiff opposed the motion, ECF No. 17, and
defendants submitted a reply brief, ECF 22 No. 19.

The parties appeared before the undersigned for oral argument on February 5, 2025, with 23
plaintiff appearing on behalf of himself and counsel appearing on behalf of defendants. ECF No.
24 22. For the reasons that follow, the undersigned recommends defendants' motion to dismiss 25
(ECF No. 13) be GRANTED, but that plaintiff be given leave to file a Third Amended Complaint
26 as to all claims except those arising under the First and Fifth Amendments, which should be 27
dismissed without leave to amend.

28 //// 1 Plaintiff also filed a motion to compel discovery and for sanctions. ECF No. 20. That 2
motion will be DENIED without prejudice as premature. 3 I. Background 4 A. Procedural History
5 Plaintiff commenced this case with the filing of a letter on March 25, 2024, along with an 6
application to proceed in forma pauperis ("IFP"). ECF Nos. 1, 2.

On May 30, 2024, the undersigned granted plaintiff's request to proceed IFP and ordered him to file an amended complaint. ECF No. 3. Plaintiff filed his first amended complaint for violation of civil rights on June 25, 2024. ECF No. 4.

The court found the first amended complaint adequate for service. ECF No. 5. Defendants represent that in early November 2024, counsel for the City of Stockton, Stockton Police Department, Vincent Magana, and Courtlyn Chappell called plaintiff and spoke with him. ECF No. 14 at 6. "Defense counsel identified himself and explained that he was representing the named Defendants in Plaintiff's First-Amended Complaint and that Plaintiff's First-Amended Complaint was insufficient as a matter of federal law.

Plaintiff agreed to file a Second-Amended Complaint." Id. Plaintiff filed the operative second amended complaint ("SAC") on November 8, 2024. ECF No. 12. B. Second Amended Complaint Plaintiff sues defendants for various violations of the Fourth Amendment, racial profiling, excessive use of force, unlawful search and seizure, violations of due process, violations of the First Amendment, and failure to follow proper procedures.

ECF No. 12 at 1. He alleges in conclusory terms that on March 24, 2022 and June 8, 2022 defendants targeted him for traffic stops based on his race and ethnicity. Id. at 2. The stops were pretextual, lacking any reasonable suspicion of criminal activity. Id. During these stops, defendants "made derogatory comments and engaged in other discriminatory behavior" such as insulting plaintiff and insinuating that he was involved in other criminal activity or had a "dirty lifestyle." Id. Plaintiff alleges that during the March 24 stop, defendants used excessive force by forcibly removing plaintiff from his vehicle and placing him in handcuffs, despite his compliance.

1 Id. The officers' "aggressive approach, including attempting to force open the locked back door of the plaintiff's car, forcibly pulling him out, and confiscating" his phone was, plaintiff alleges, excessive under the circumstances. During the June 8 stop, defendants again used excessive force by unlawfully searching his vehicle and making derogatory comments about plaintiff's belongings.

Id. at 2. Both of these searches were conducted without probable cause or a warrant. 6 Plaintiff was detained without probable cause and subjected to unnecessary questioning. Id. at 2- 7 3. Plaintiff alleges that the June 8 interaction involved an unlawful arrest. Id. at 2. Plaintiff 8 alleges that during the March 24 stop he attempted to record the interaction with his phone, but 9 defendant officers confiscated his phone, hindering his ability to document the incident.

Id. 10 Plaintiff alleges municipal liability exists because the City of Stockton failed to train its 11 officers, failed to adequately supervise its officers, and failed to take appropriate disciplinary 12 actions against repeat offenses by its officers. Id. at 4. 13 C. Motion to Dismiss 14 Defendants

move to dismiss this case on the grounds that plaintiff's Second Amended 15 Complaint fails to state a claim upon which relief can be granted pursuant to Federal Rule of Civil 16 Procedure 12(b)(6).

ECF No. 14 at 6-7. 17 II. Analysis 18 A. Applicable Legal Standards 19 1. Standards Governing Motions to Dismiss 20 "The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal 21 sufficiency of the complaint." *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 22 1983). "Dismissal can be based on the lack of a cognizable legal theory or the absence of 23 sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't.*, 901 24 F.2d 696, 699 (9th Cir.

1990). In order to survive dismissal for failure to state a claim, a 25 complaint must contain more than a "formulaic recitation of the elements of a cause of action;" it 26 must contain factual allegations sufficient to "raise a right to relief above the speculative level." 27 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It is insufficient for the pleading to 28 contain a statement of facts that "merely creates a suspicion" that the pleader might have a legally 1 cognizable right of action.

Id. (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* 2 § 1216, pp. 235-35 (3d ed. 2004)). Rather, the complaint "must contain sufficient factual matter, 3 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 4 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when 5 the plaintiff pleads factual content that allows the court to draw the reasonable inference that the 6 defendant is liable for the misconduct alleged." *Id.* 7 In reviewing a complaint under this standard, the court "must accept as true all of the 8 factual allegations contained in the complaint," construe those allegations in the light most 9 favorable to the plaintiff and resolve all doubts in the plaintiff's favor.

See *Erickson v. Pardus*, 10 551 U.S. 89, 94 (2007); *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 11 960 (9th Cir. 2010), cert. denied, 131 S. Ct. 3055 (2011); *Hebbe v. Pliler*, 627 F.3d 338, 340 (9th 12 Cir. 2010).

However, the court need not accept as true legal conclusions cast in the form of 13 factual allegations, or allegations that contradict matters properly subject to judicial notice. See 14 *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981); *Sprewell v. Golden State 15 Warriors*, 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001). 16 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.

17 *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may 18 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in

support 19 of his claim which would entitle him to relief. *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014).

The court's liberal interpretation of a pro se complaint, however, may not supply essential 21 elements of the claim that were not pled. *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d 22 266, 268 (9th Cir. 1982); see also *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). A pro se 23 litigant is entitled to notice of the deficiencies in the complaint and an opportunity to amend, 24 unless the complaint's deficiencies could not be cured by amendment.

See *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). 26 2. Constitutional Claims Under § 1983 27 42 U.S.C. § 1983 provides a cause of action for the deprivation of "rights, privileges, or 28 immunities secured by the Constitution or laws of the United States" by a person acting "under 1 color of any statute, ordinance, regulation, custom, or usage." *Gomez v. Toledo*, 446 U.S. 635, 2 639 (1980).

To succeed in asserting a claim under § 1983, a plaintiff must allege that an action 3 (1) occurred "under color of state law," and (2) resulted in the deprivation of a constitutional or 4 federal statutory right. *Leer v. Murphy*, 844 F.2d 628, 632–33 (9th Cir.1988) (citations omitted). 5 Here, all of plaintiff's claims of constitutional violations are brought pursuant to §1983.

6 B. Preliminary Considerations 7 The second amended complaint includes separate lists of largely conclusory factual 8 allegations and of legal claims identified by type. ECF No. 12 at 2-3. It is not organized in a way 9 that clearly identifies what acts of which defendants are intended to demonstrate which 10 constitutional violations. See ECF No. 12.

Accordingly, the complaint fails to present a "short 11 and plain" statement setting forth the basis for plaintiff's entitlement to relief as required by Fed. 12 R. Civ. P. 8(a). Without more detailed factual allegations—including, for example, exactly what 13 each individual defendant did on March 24, 2022 and on June 8, 2022 respectively—it is 14 impossible for the court to meaningfully conduct the analysis required under Rule 12(b)(6).

15 Moreover, because the complaint does not clearly specify which named defendant 16 committed what specific acts, it is impossible to determine whether and how each defendant 17 personally participated in the deprivation of plaintiff's rights. See *Jones v. Williams*, 297 F.3d 18 930, 934 (9th Cir. 2002). There must be an actual connection or link between the actions of the 19 defendants and the deprivation alleged to have been suffered by plaintiff.

See *Ortez v. 20 Washington County, State of Oregon*, 88 F.3d 804, 809 (9th Cir. 1996); see also *Taylor v. List*, 21 880 F.2d 1040, 1045 (9th Cir. 1989). If plaintiff is granted leave to amend and chooses to amend 22 the complaint, he must clearly state which defendant is responsible in what way for each alleged 23 violation. 24 The court will proceed to discuss the factual deficiencies of plaintiff's individual claims.

25 Should the district judge adopt the recommendation that plaintiff be given a final opportunity to 26 amend, plaintiff is advised that a third amended complaint should be organized on a claim-by- 27 claim basis, specifying as to each claim which defendants are alleged to be liable and precisely 28 what each of them did to violate the constitutional right at issue.

Further information about 1 amendment is provided below in the final section of these Findings and Recommendations. 2 C. Unlawful Arrest in Violation of the Fourth Amendment 3 “A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth 4 Amendment, provided the arrest was without probable cause or other justification.” *Lacey v. 5 Maricopa County*, 693 F.3d 896, 918 (9th Cir.

2012) (en banc) (citation and internal quotation 6 marks omitted); *Maxwell v. County of San Diego*, 708 F.3d 1075, 1085 (9th Cir. 2013) (an arrest 7 “without probable cause” is “an unreasonable seizure”). An arrest is supported by probable 8 cause if, “under the totality of circumstances known to the arresting officers, a prudent person 9 would have concluded that there was a fair probability that [the defendant] had committed a 10 crime.” *Grant v. City of Long Beach*, 315 F.3d 1081, 1085 (9th Cir.

2002), quoting *United States 11 v. Smith*, 790 F.2d 789, 792 (9th Cir. 1986). Objective facts and circumstances known to the 12 officer at the time of the arrest determine its validity. *Beck v. State of Ohio*, 379 U.S. 89, 95 13 (1964).

The existence of probable cause defeats a claim for false arrest. *Hart v. Parks*, 450 F.3d 14 1059, 1069 (9th Cir. 2006). 15 Defendants present two primary arguments: (1) that plaintiff’s claim is conclusory, and (2) 16 that the allegations of SAC do not demonstrate that plaintiff was actually arrested, which defeats 17 a claim for false arrest.

The court agrees on both counts. “A brief but complete restriction of 18 liberty, if not excessive under the circumstances, is permissible during a Terry stop and does not 19 necessarily convert the stop into an arrest.” *United States v. Bautista*, 684 F.2d 1286, 1289 (9th 20 Cir. 1982). Handcuffing also does not necessarily convert an investigative detention into an 21 arrest.

See *Washington v. Lambert*, 98 F.3d 1181, 1185 (9th Cir. 1996). Whether a stop becomes 22 an arrest depends on the totality of the circumstances, of which handcuffing or other use of force 23 is only one. *Id.* 24 Because the SAC does not specify the circumstances of the stop or provide any details 25 about the ensuing detention and its context, it does not present facts which taken as true would 26 establish that plaintiff was arrested and that the arrest lacked probable cause.

Accordingly, the 27 SAC fails to state an unlawful arrest claim on which relief may be granted. Because plaintiff may 28 /// 1 be able to cure the pleading defect by the addition of further facts, leave to amend is 2 recommended. 3 D. Unreasonable Search and Seizure in Violation of the Fourth Amendment 4 Plaintiff alleges in conclusory fashion that he was subjected to

unconstitutional searches 5 and seizures on March 24, 2022, and June 8, 2022, but the SAC lacks factual detail regarding the 6 scope of any search and the nature of any seizure, let alone the surrounding circumstances.

See 7 ECF No. 12. It is unclear whether plaintiff's person was searched, whether his car was searched, 8 and whether his vehicle was impounded. It is entirely unclear who did what, on which date. 9 The Fourth Amendment prohibits "unreasonable searches and seizures." *Allen v. City of Portland*, 73 F.3d 232, 235 (9th Cir.1995). Not all searches and seizures are prohibited under the 11 Fourth Amendment, only those that are "unreasonable." *Franklin v. Foxworth*, 31 F.3d 873, 875 12 (9th Cir.

1994). Unreasonableness is measured by an objective test based on all of the 13 circumstances present in a given situation. *Id.* at 876-76. Objective reasonableness is evaluated 14 from the perspective of a "reasonable officer on the scene," in light of all the facts and 15 circumstances confronting law enforcement. *Torres v. City of Madera*, 648 F.3d 1119, 1124 (9th 16 Cir.

2011). 17 Defendants are correct that the SAC does not contain enough information for this claim to 18 survive dismissal. For the SAC to withstand a Fed. R. Civ. P. 12(b)(6) motion, plaintiff needs to 19 allege enough facts for the court and for the defendants to understand exactly what happened on 20 which date and why any search or seizure could be considered "unreasonable" under the 21 circumstances.

Plaintiff must explain what actions were taken, by who, and what circumstances 22 make those actions "unreasonable." Because the SAC alleges insufficient facts, this claim must 23 be dismissed but leave to amend should be permitted. 24 E. Excessive Force in Violation of the Fourth Amendment 25 The Fourth Amendment requires law enforcement officers to limit the amount of force 26 used to that which is objectively reasonable in light of the circumstances.

Tennessee v. Garner, 27 471 U.S. 1, 7–8 (1985); *Graham v. Connor*, 490 U.S. 386, 396 (1989). Under this standard, "the 28 question is whether the officers' actions are 'objectively reasonable' in light of the facts and 1 circumstances confronting them, without regard to their underlying intent or motivation." 2 *Graham*, 490 U.S. at 397. Central to "Graham's objective-reasonableness test is the clear 3 principle that the force used to make an arrest must be balanced against the need for force: it is 4 the need for force which is at the heart of the Graham factors." *Velazquez v. City of Long Beach*, 5 793 F.3d 1010, 1025 (9th Cir.

2015). To determine whether a particular use of force was 6 unreasonable, a court is to consider: "(1) the severity of the intrusion on the individual's Fourth 7 Amendment rights by evaluating the type and amount of force inflicted, (2) the government's 8 interest in the use of force, and (3) the balance between the gravity of the intrusion on the 9 individual and the government's need for that intrusion." *Williamson v. City of National City*, 23 10 F.4th 1146, 1151 (9th Cir.

2022) (citing *Graham*, 490 U.S. at 397). 11 Here, plaintiff makes allegations that are not sufficient to withstand a motion to dismiss. 12 He alleges that on March 24, 2022, defendants “used excessive force by forcibly removing 13 Plaintiff from his vehicle and placing him in handcuffs, despite his compliance[,]” and that on June 8, 2022, “Defendants again used excessive force by unlawfully searching Plaintiff’s vehicle 15 and making derogatory comments about his belongings.” ECF No. 12 at 2.

The latter allegations 16 do not identify any use of force, let alone one that is unreasonable. Elsewhere in the SAC 17 plaintiff alleges that the officers took an “aggressive approach, including attempting to force open 18 the locked back door of the plaintiff’s car, forcibly pulling him out, and confiscating plaintiff’s 19 phone[.]” *Id.* at 5. It is unclear when this happened.

None of these allegations specify whether it 20 was Officer Chappell or Officer Magana (or both) who presumably laid hands on plaintiff, and 21 the SAC does not specify the nature and degree of force used to remove plaintiff from his vehicle 22 or the circumstances which would inform the reasonableness of that force. Without more detailed 23 allegations, it cannot be determined whether plaintiff can state a claim for excessive force in 24 violation of the Fourth Amendment.

Accordingly, this claim must be dismissed but leave to 25 amend should be permitted. 26 F. Retaliation in Violation of the First Amendment 27 “[T]he First Amendment prohibits government officials from subjecting individuals to 28 ‘retaliatory actions’ after the fact for having engaged in protected speech.” *Houston Cmty. Coll. 1 Sys. v. Wilson*, 595 U.S. 468, 474 (2022) (quoting *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019)).

2 “To state a First Amendment retaliation claim, a plaintiff must plausibly allege “that (1) he was 3 engaged in a constitutionally protected activity, (2) the defendant’s actions would chill a person 4 of ordinary firmness from continuing to engage in the protected activity and (3) the protected 5 activity was a substantial or motivating factor in the defendant’s conduct.” *Capp v. County of 6 San Diego*, 940 F.3d 1046, 1053 (9th Cir.

2019) (internal quotations omitted). 7 Plaintiff alleges that he was attempting to record his interaction with the officer 8 defendants during the March 24th incident, and his phone was confiscated, impeding his freedom 9 of speech and expression. ECF No. 12 at 5.

The constitutional right of observers to record police 10 activity in a public place has long been established in the Ninth Circuit. *Fordyce v. City of 11 Seattle*, 55 F.3d 436, 439 (9th Cir. 1995) (arrest of videographer for recording police at protest 12 violates First Amendment); *Askins v. U.S. Dep’t of Homeland Sec.*, 899 F.3d 1035, 1044 (9th 13 Cir. 2018) (First Amendment bars blanket prohibition on observers recording Border Patrol 14 activities).

However, the established law regarding the right to record police interactions neither 15 establishes nor implies any right of an individual to record while detained. See *Alston v. City of*

16 Sacramento, No. 2:21-cv-2049-DAD-AC, 2023 U.S. Dist. LEXIS 182975 at 32-34, 2023 WL 17 6626174 at *10 (E.D. Cal. Oct. 11, 2023), report and recommendation adopted, No. 2:21-cv-18 02049-DAD-AC, 2024 WL 733260 (E.D.

Cal. Feb. 22, 2024). To the contrary, the Ninth Circuit 19 cases recognizing a right to film police activity have all involved filming by journalists, 20 bystanders, and advocates. See *id.* (discussing cases). Other court have expressly held that there 21 is not a clearly established right for a person to videotape police while they are pulled over on a 22 traffic stop, because traffic stops have been characterized as an “inherently dangerous situation.” 23 *Kelly v. Borough of Carlisle*, 622 F.3d 248, 262 (3rd Cir.

2010). 24 The Constitution permits reasonable time, place and manner restrictions on otherwise 25 protected First Amendment activity. See *Askins*, 899 F.3d at 1044; see also *Glick v. Cunniffe*, 26 655 F.3d 78, 85 (1st Cir. 2011) (the right to record police activity is “not unqualified”).

The 27 confiscation of a phone from a person being detained appears on its face to come within the scope 28 of permissible time, place and manner restrictions on the recording of police. *Kelly*, 622 F.3d at 1 262. In any event, it is clear from plaintiff’s allegations that the confiscation of his phone was 2 secondary to his detention, and that he was not detained because he was recording police activity 3 as in *Fordyce* and similar cases.

A retaliatory motive is therefore lacking. 4 For all these reasons, plaintiff’s allegations fail to establish a violation of his First 5 Amendment rights. The gravamen of the claim is sufficiently clear to support a conclusion that 6 amendment would not cure the deficiency.

Because this claim fails as a matter of law, it should 7 be dismissed without further leave to amend. 8 G. Racial Profiling in Violation of Equal Protection Rights 9 “The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 10 ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a 11 direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne* 12 *Living Ctr.*, 473 U.S. 432, 439 (1985) (citing *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). “To state 13 a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth 14 Amendment a plaintiff must show that the defendants acted with an intent or purpose to 15 discriminate against the plaintiff based upon membership in a protected class.” *Barren v.* 16 *Harrington*, 152 F.3d 1193, 1194 (9th Cir.

1998). Plaintiff’s only allegation with respect to his 17 equal protection claim is that “Defendants targeted Plaintiff for traffic stops based on his race and 18 ethnicity” and that the “stops were pretextual.” ECF No. 12 at 2. 19 The conclusory assertion that defendants targeted plaintiff based on his race, without 20 more, fails to state an equal protection claim.

This claim should be dismissed with leave to 21 amend. On amendment plaintiff should provide all facts demonstrating that each of the stops was 22 motivated by plaintiff's race. 23 H. Denial of Due Process in Violation of the Fourteenth Amendment 24 Although the SAC references a Fourteenth Amendment Due Process claim, ECF No. 12 at 25 3, the court cannot identify the factual basis for such a claim.

To the extent that due process is 26 invoked on the basis that "the officers detained the plaintiff without a valid reason and failed to 27 provide a valid reasons for the detention[.]" id. at 5, the applicable constitutional provision is the 28 Fourth Amendment and not the Due Process Clause. 1 The Due Process Clause of the Fourteenth Amendment provides that no state shall 2 "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend.

3 XIV, § 1. "To state a prima facie substantive or procedural due process claim, one must, as a 4 threshold matter, identify a liberty or property interest protected by the Constitution." United 5 States v. Guillen-Cervantes, 748 F.3d 870, 872 (9th Cir. 2014). Restrictions of liberty and 6 seizures of property attendant to law enforcement activity are governed exclusively by the Fourth 7 Amendment standards discussed previously.

See *Graham v. Connor*, 490 U.S. 386, 395 (1989) 8 (where the Fourth Amendment provides an explicit textual source of constitutional protection, 9 that amendment and not generalized concepts of due process govern). 10 The SAC contains no identifiable factual basis for a Fourteenth Amendment due process 11 claim. If plaintiff files a third amended complaint, he should be permitted to amend this claim but 12 should do so only if he has a factual basis for it that is distinct from his Fourth Amendment 13 claims.

14 I. Denial of Due Process in Violation of the Fifth Amendment 15 Plaintiff's list of constitutional violations also includes the deprivation of liberty without 16 due process of law in violation of the Fifth Amendment. ECF No. 12 at 3.

The factual basis for 17 this claim is not clear. To the extent that plaintiff is proffering an alternative constitutional theory 18 for the illegality of his detentions on March 24 and June 8, 2022, the Fourth Amendment 19 exclusively governs such claims. *Graham*, 490 U.S. at 395. Regardless of its factual basis, 20 however, this claim fails as a matter of law because the Fifth Amendment applies "only to actions 21 of the federal government." *Lee v. City of Los Angeles*, 250 F.3d 668, 687 (9th Cir.

2001); see 22 also *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008). Defendants in this case are not 23 federal government actors, and the Fifth Amendment therefore does not apply to their conduct. 24 This claim cannot be cured by amendment. 25 J. Municipal Liability 26 The SAC expressly states a claim for municipal liability against the City of Stockton, as 27 follows: 28

1 Plaintiff alleges that the City of Stockton is liable for the constitutional violations committed by its officer under the doctrine 2 of respondeat superior.

The City, through its policies, practices, customs, and deliberate indifference, has created a culture that 3 permits and encourages such misconduct. 4 Specifically, Plaintiff alleges that the City of Stockton: 5 Failed to adequately train its officer: the City's training programs were deficient in addressing issues of racial profiling, excessive 6 force, and constitutional rights.

7 Failed to adequately supervise its officers: the City's supervisory structure was ineffective in preventing and addressing officer 8 misconduct. 9 Failed to take appropriate disciplinary action against repeat offenders: Despite knowledge of Officer Magana's history of 10 misconduct, the City failed to take meaningful disciplinary action, allowing the officer to continue to violate the rights of 11 citizens.

12 ECF No. 12 at 4. 13 It is well-established that "a municipality cannot be held liable solely because it employs a 14 tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a respondeat 15 superior theory." *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 692 (1978).

To 16 state a Monell claim against a municipality, plaintiff must allege facts demonstrating "that an 17 'official policy, custom, or pattern' on the part of [the municipality] was 'the actionable cause of 18 the claimed injury.'" *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1143 (9th Cir. 2012) (quoting 19 *Harper v. City of Los Angeles*, 533 F.3d 1010, 1022 (9th Cir.

2008)). The Ninth Circuit has 20 recognized four theories for establishing municipal liability under Monell: "(1) an official policy; 21 (2) a pervasive practice or custom; (3) a failure to train, supervise, or discipline; or (4) a decision 22 or act by a final policymaker." *Horton by Horton v. City of Santa Maria*, 915 F.3d 592, 602–03 23 (9th Cir. 2019). 24 While the SAC identifies cognizable theories for municipal liability, it does not contain 25 facts that state a claim under any of those theories.

The "formulaic recitation of the elements of a 26 cause of action" does not state a claim absent specific factual allegations sufficient to "raise a 27 right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

To state a § 1983 claim 28 based on a failure to properly train, plaintiff must plead facts showing: (1) that he was deprived of 1 a constitutional right, (2) that the municipality had a training policy that "amounts to deliberate 2 indifference to the [constitutional] rights of the persons" with whom its police officers are likely 3 to come into contact; and (3) that plaintiff's constitutional injury would have been avoided had 4 the municipality properly trained those officers.

Young v. City of Visalia, 687 F.Supp.2d 1141, 5 1148 (E.D. Cal. 2009) (quoting Blankenhorn v. City of Orange, 485 F.3d 463, 484 (9th Cir. 6 2007)). Plaintiff must allege facts demonstrating that the municipality “disregarded the known or 7 obvious consequence that a particular omission in their training program would cause employees 8 to violate citizen’s constitutional rights.” Connick v. Thompson, 563 U.S. 51, 61 (2011).

This 9 generally requires a pattern of similar constitutional violations. Flores v. County of Los Angeles, 10 758 F.3d 1154, 1159 (9th Cir. 2014). Here, the SAC does not contain specific factual allegations 11 about the City’s training or supervision policies and practices related to “racial profiling, 12 excessive force, and constitutional rights.” It does not identify the deficiencies of such training or 13 supervision, the circumstances making those deficiencies and their likely consequences obvious 14 to the City, or how those deficiencies caused the alleged violations of plaintiff’s rights.

In the 15 absence of such facts, plaintiff fails to state a claim. 16 “Unlike a failure to train claim, the Ninth Circuit has accepted that the actions of a single 17 officer might be enough to support a failure to discipline claim.” Hayes v. Riley, 525 F. Supp. 3d 18 1118, 1120–21 (N.D. Cal. 2020) (internal citations omitted). “If the same officer repeatedly 19 violates the constitutional rights of a city’s residents, and the city is on notice of these violations 20 and fails to properly discipline the officer, by definition the city is deliberately indifferent to the 21 likelihood that the officer will continue to commit constitutional violations in the future.” Id. at 22 1121.

Plaintiff’s allegations regarding failure to discipline Officer Magana are insufficient 23 because the SAC does not identify prior constitutional violations committed by the officer, facts 24 demonstrating notice to the City of a pattern of misconduct by the officer, and the investigative 25 and/or disciplinary responses alleged to have been inadequate. 26 Because this claim fails for lack of sufficiently detailed factual allegations, plaintiff should 27 be provided leave to amend.

28 //// 1 K. Available Damages 2 The court declines to reach defendants’ argument as to damages. Because the 3 undersigned is recommending dismissal with leave to amend, an assessment of available remedies 4 is premature. 5 III. Leave to Amend 6 For the reasons explained above, plaintiff should be granted leave to amend as to all 7 claims except for those asserted under the First and Fifth Amendments.

Accordingly, the 8 undersigned recommends that the motion to dismiss be granted, and that plaintiff be granted leave 9 to amend his claims under the Fourth and Fourteenth Amendments and his municipal liability 10 claim only. 11 IV. Motion for Discovery Sanctions 12 Plaintiff filed a motion to compel discovery and for sanctions on December 30, 2024. 13 ECF No. 20.

As discussed at oral argument on defendants’ motion to dismiss, this case remains 14 at the pleading stage, and formal discovery has not yet commenced. Accordingly, the 15 undersigned

denies this motion without prejudice as premature. 16 V. Pro Se Plaintiff's Summary 17 The Magistrate Judge is recommending that defendants' motion to dismiss be granted, but 18 that you be allowed to file a Third Amended Complaint that includes all claims you wish to raise 19 except for your Fifth Amendment claim and your First Amendment claim.

The problems with 20 your First and Fifth Amendment claims cannot be fixed by adding more facts. You will have 21 21 days to file objections to these recommendations if you wish to do so. Then, the District Judge 22 will decide whether or not to adopt the recommendations. If the recommendations are adopted, 23 you will have 30 days from the District Judge's order to file your Third Amended Complaint.

24 In drafting a Third Amended Complaint, remember that where the Fourth Amendment 25 applies—false arrest, unreasonable searches and seizures, and excessive force—you do not need 26 (and cannot pursue) a due process claim based on the same facts. 27 A Third Amended Complaint should be organized on a claim-by-claim basis, with all the 28 facts related to each claim set forth under that claim's heading.

Do not rely on legal conclusions 1 like force being "excessive" or a search "unreasonable." Instead, provide the facts that show why 2 you think the constitutional standard was violated. Describe what each defendant did to violate 3 your rights. Describe the circumstances of the stops and detentions and the officer's actions with 4 sufficient detail that the court can tell what actually happened on each date and who did what.

5 On your equal protection claim, provide the facts and circumstances that show you were 6 racially profiled or discriminated against based on your race. On your municipal liability claim, 7 you should specify what the City's training practices and "supervisory structures" are, how they 8 are deficient, and how they led to your rights being violated. If you want to pursue the claim that 9 failure to discipline Officer Magana led to your rights being violated, provide details about the 10 previous incidents that put the City on notice that he was committing misconduct and what the 11 City did or did not do about it.

In general as to all claims, your complaint must state facts which, 12 if proved, would be enough to show violations of your constitutional rights. 13 An amended complaint must be complete unto itself. It must name all defendants you 14 wish to sue and contain all your claims and factual allegations against each of them. Once an 15 amended complaint is filed, it will become the operative complaint and the court will not refer to 16 any prior complaints.

17 Your discovery motion is being denied because it was filed too early. A litigation 18 schedule will be set once the pleadings are closed. 19 VI. Conclusion 20 For the reasons explained above, it is hereby ORDERED that plaintiff's motion to compel 21 discovery (ECF No. 20) is DENIED without prejudice as premature. 22 Further, the undersigned recommends that defendants' motion

to dismiss (ECF No. 13) be GRANTED and that the Second Amended Complaint (ECF No. 12) be DISMISSED, with leave to amend as to all claims except for those brought under the First and Fifth Amendments.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Id.; see also Local Rule 304(b).

Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections within the specified time may waive the right to appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991). DATED: February 19, 2025 ~ Lhar—e_ UNITED STATES MAGISTRATE JUDGE