

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Burt v. County of San Diego

Burt · No. 3:24-CV-02255-CAB · Decided March 26, 2025

OPINION

Burt v. County of San Diego

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JAMEL BURT, Case No. 3:24-CV-02255-CAB 12 Plaintiff,

ORDER DISMISSING COMPLAINT

13 v. [Doc. Nos. 6, 13] 14 COUNTY OF SAN DIEGO, et al., 15 Defendants, 16 17 18 On March
4, 2024, Plaintiff Jamel Burt filed a lawsuit against Defendants Officer 19 Nicolai Ramos and the
County of San Diego alleging Section 1983 claims of excessive 20 force, retaliation, false arrest,
and two state law claims. [Case No. 24-cv-00662-CAB-VET 21 (“Burt I”); see generally Compl.
at 3–7.] On December 3, 2024, Plaintiff Burt filed another 22 case against the County of San
Diego and Officers Alcarion, Glisson, Perkins, Nevins, and 23 Does 1–5 (in their individual
capacities). [Case No. 24-cv-02255-CAB-VET (Burt II).] In 24 this case, he alleges Section 1983
failure to train, failure to supervise, and failure to 25 discipline claims against the named Officer
Defendants and a Monell liability claim against 26 the County. The County filed a motion to
dismiss, urging, among other things, that the 27 second lawsuit was impermissible claim splitting.
[Doc. No. 6.] The Court agrees. 28 1 The Court takes the alleged material facts as true and
construes them in the light 2 most favorable to Plaintiff. *Stoner v. Santa Clara Cnty. Office of
Educ.*, 502 F.3d 1116, 3 1120 (9th Cir. 2007). The facts alleged in both lawsuits are almost
identical. Both relate 4 to a December 18, 2022 investigative stop in San Diego County allegedly
involving 5 Plaintiff and Officer Nicolai Ramos. [Compl. ¶¶ 15–26.] During that stop, Plaintiff
claims 6 that he was handcuffed and viciously slammed into the concrete because, according to
him, 7 Plaintiff refused to answer Officer Nicolai’s questions. [See *id.*] 8 The facts in Burt II,
although naming additional Officer Defendants on failure to 9 train/supervise type theories, are
the same as alleged in Burt I. The County is named in 10 both. This raises the issue of
impermissible claim splitting. Claim splitting bars a party 11 from subsequent litigation where the
“same controversy” exists. See *Adams v. California 12 Dep’t of Health Servs.*, 487 F.3d 684, 688–
89 (9th Cir. 2007), overruled on other grounds 13 in *Taylor v. Sturgell*, 553 U.S. 880, 904 (2008).
Improper claim splitting warrants 14 dismissal. See *Single Chip Sys. Corp. v. Intermec IP Corp.*,

495 F. Supp. 2d 1052, 1065 15 (S.D. Cal. 2007); *Kehano v. Hawaii*, 202 F. App'x 208, 209 (9th Cir. 2006) (unpublished) 16 (affirming dismissal of claims as duplicative of pending claims in a separate action). 17 To determine if the doctrine of (anti) claim splitting applies, the Ninth Circuit 18 imports the test for issue preclusion. *Adams*, 487 F.3d at 689; see *Single Chip Sys. Corp.* 19 495 F. Supp. 2d at 1058. No final judgment in the first suit is required. *Single Chip Sys. Corp.*, 495 F. Supp. 2d at 1058. The test for claim preclusion follows: 21 (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether 22 substantially the same evidence is presented in the two actions; (3) whether 23 the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts. 24 25 *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201–02 (9th Cir. 1982). “The last of 26 these criteria is the most important.” *Id.* at 1202. Additionally, the parties in the first 27 litigation must be the same as in the second or be in privity. *Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051–52 (9th Cir. 2005). 1 Both cases involve alleged violations of the same claimed right: freedom from 2 excessive force and retaliation under the Fourth Amendment. 1 A finding that Officer 3 Ramos did not violate Plaintiff’s Fourth Amendment rights in *Burt I* would defeat the 4 Monell and failure to train/supervise/discipline claims in *Burt II*. Both require a violation 5 of a constitutional right at issue—one that does not differ from the first case to the second 6 because the alleged violation originates from the exact same fact pattern (the traffic stop 7 involving Officer Ramos). The first, second, and fourth (most important) factors all clearly 8 favor Defendants. 9 In *Burt II*, Plaintiff adds additional officers which may implicate separate evidence 10 relating to various training procedures to establish failure to train/supervision claims. But 11 the core facts will remain the same: if Plaintiff cannot prove that his rights were violated 12 at the traffic topic, he cannot sustain his claims against the County or the newly added 13 officers. The second preclusion factor also favors Defendants. 14 Next is the question of privity. *Burt I* named the County but *Burt II* named additional 15 Officer Defendants. “[P]rivacy is a flexible concept dependent on the particular relationship 16 between the parties in each individual set of cases.” *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 322 F.3d 1064, 1081–82 (9th Cir. 2003). Privity may exist 18 when there is “substantial identity” between parties or “sufficient commonality of interest.”

19 *Id.* at 1082. In the context of claim splitting, the privity requirement is met where there 20 was “virtual representation” of the party in the initial action, including “an identity of 21 interests and adequate representation.” *Adams*, 487 F.3d at 691. 22 The complaint recognizes that the Officer Defendants were employed by the County 23 at the time of the traffic stop in question. [Compl. ¶¶ 7–10.] The claims in *Burt II* involve 24 25 1 Although Plaintiff seeks to establish liability through the Fourteenth Amendment, [Compl. ¶ 27], 26 excessive force claims in the context of an investigative stop falls under the Fourth Amendment. *A. K. H by & through Landeros v. City of Tustin*, 837 F.3d 1005, 1010 (9th Cir. 2016). Excessive force under the 27

Fourteenth Amendment may apply to confined/committed individuals in certain contexts. See *Youngberg v. Romeo*, 457 U.S. 307, 315-16, (1982); *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1067 (9th Cir. 2016) (liability based on the alleged supervisory authority of these officers over Officer Ramos (named in Burt I)). This alleged “close relationship” between the Defendants is indicative of privity. See *Irwin v. Mascott*, 370 F.3d 924, 930 (9th Cir. 2004). Moreover, the interests of the County in Burt I are completely aligned with the interests of the Officer Defendants in Burt II. All Defendants share an interest in disproving that any constitutional violation plagued the December 18, 2022 investigative stop of Plaintiff. The Court is not persuaded by Plaintiff’s argument that those interests somehow differ since the Officer Defendants are sued in their individual capacities. In this context, given the one-to-one factual overlap and the alleged constitutional violation’s genesis in that fact pattern, a dismissal of Burt I would necessarily require dismissal in Burt II. This is exactly what the doctrine of claim splitting guards against. Should Plaintiff seek leave to amend Burt I, the Court also must highlight the following pleading deficiencies as it relates to the Officer Defendants in Burt II. First, as it relates to the failure to train claim, the Plaintiff must prove that the officials were deliberately indifferent to the needs of their subordinates, and that failure to train caused the complained of constitutional harm. *Flores v. Cnty. of Los Angeles*, 758 F.3d 1154, 1158–59 (9th Cir. 2014) (citing *Connick v. Thompson*, 563 U.S. 51, 59 (2011)). As Defendants point out, there is no allegation in the complaint that any of the Officer Defendants were deliberately indifferent to the needs of their subordinates. Moreover, any connection the Officer Defendants had to the constitutional harms claimed is alleged in a conclusory fashion. To successfully plead a Section 1983 claim, Plaintiff must set forth facts that each defendant personally violated his constitutional rights. See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). This requires an “individualized” assessment of causality to attribute conduct (or lack thereof) that allegedly forms the basis of a constitutional deprivation. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988). Officer Defendants raise these arguments in their motion to dismiss, [Doc. No. 13], to which the Plaintiff

1 Cir. 1988). Based on the complaint, it is unclear how any of the Officer Defendants
2 violated Plaintiff’s constitutional rights.3 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th
3 Cir. 1998) (“A plaintiff must allege facts, not simply conclusions, t[o] show that [each
4 defendant] was personally involved in the deprivation of his civil rights.”). 5 The failure to
supervise cause of action suffers from the exact same deficiencies. 6 Plaintiff has not provided
sufficient facts indicating how the Officer Defendants failed to 7 individually supervise Officer
Ramos. See *Keates v. Koile*, 883 F.3d 1228, 1242–43 (9th
8 Cir. 2018) (explaining that a supervisor-liability theory under Section 1983 requires a
9 showing of personal involvement in the deprivation and a sufficient causal connection to 10 the
supervisor’s wrongful conduct). 11 Similarly, the failure to discipline claim falls short because
Plaintiff has not alleged 12 any facts that show how the Officer Defendants ratified Officer

Ramos's conduct other 13 than the conclusory allegation that they have failed to conduct proper investigations and 14 render appropriate supervision. [Compl. ¶ 65]; see *Larez v. City of Los Angeles*, 946 F.2d 15 630, 646 (9th Cir.1991) (requiring ratification of unconstitutional conduct). None of the 16 claims against the Officer Defendants contain sufficient facts for this Court to analyze the 17 Officer Defendants' individual causal relationship to any alleged constitutional violation. 18 Any proposed amendment in Burt I, if seeking to add Defendants, should aim to rectify 19 these pleading shortcomings. 20 This case is dismissed with leave to amend for impermissible claim splitting. Any 21 amendment here would require the overhaul of the core pleaded facts. The Court will 22 consider an amended complaint in Burt I by a motion seeking appropriate leave. 23 24 25 3 The same applies to the Doe Defendants. "As a general rule, the use of 'John Doe' to identify a defendant 26 is not favored." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (citing *Wiltsie v. California Department of Corrections*, 406 F.2d 515, 518 (9th Cir. 1968)). Plaintiff provides no facts indicating what 27 individual involvement any Doe Defendant had relating to the constitutional claims at issue. See *Leer*, 844 F.2d at 633 (explaining that a Section 1983 claim requires an "individualized" assessment of 28 1 || Nevertheless, should the Plaintiff seek amendment in this case, an amended complaint must 2 filed by April 9, 2025. 3 4 It is SO ORDERED. 5 6 Dated: March 26, 2025 € ZL 7 Hon. Cathy Ann Bencivengo 8 United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28