

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Wachs v. County of Kern, et al.

Wachs · No. 1:23-cv-00445-KES-CDB · Decided June 10, 2025

SUMMARY

The document contains Findings and Recommendations recommending that Defendants’ motion to dismiss Patrick Wachs’s complaint be granted and that the complaint be dismissed with leave to amend. The court concludes that the complaint lacks sufficient factual allegations supporting Fourth Amendment, substantive due process, false arrest or imprisonment, and Monell municipal-liability claims. The document also vacates the scheduling conference and provides a 14-day period for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 10, 2025
DOCKET	1:23-cv-00445-KES-CDB
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiff's complaint. The magistrate judge issued Findings and Recommendations recommending that the motion be granted and the complaint be dismissed with leave to amend, subject to review by the assigned district judge.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court considers whether the complaint states a plausible claim for relief. Factual allegations are accepted as true and construed in the plaintiff's favor, but legal conclusions, conclusory allegations, unreasonable inferences, and allegations contradicted by exhibits or matters subject to judicial notice are not accepted as true. Pro se pleadings are construed liberally. Leave to amend should be granted unless it is absolutely clear that the deficiencies cannot be cured.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

County of Kern, Joshua Cabezuela, Juan Cuevas, Andrew Avila,
Phillip Garza v. Patrick Wachs

TOPICS

motions to dismiss

section 1983

police misconduct

municipal liability

civil procedure

PRACTICE AREAS

civil rights

civil procedure

constitutional law

municipal liability

remedies

QUESTIONS PRESENTED

1. Whether the complaint stated a plausible Fourth Amendment claim under 42 U.S.C. § 1983 for unlawful detention or arrest.
2. Whether Plaintiff could pursue the same arrest-related theory under substantive due process when the Fourth Amendment supplied the specific constitutional protection.
3. Whether the complaint adequately pleaded municipal liability against Kern County under Monell.
4. Whether the state-law false-arrest and false-imprisonment claims were adequately pleaded.
5. Whether Plaintiff should be granted leave to amend.

HOLDINGS

1. The complaint failed to state a plausible Fourth Amendment claim because it merely alleged, without supporting facts, that Plaintiff was arrested without probable cause and did not plead the circumstances of the arrest or whether the arrest was made with a warrant or other justification.
2. The substantive-due-process claim failed because the Fourth Amendment provides the specific constitutional source of protection for an allegedly unreasonable arrest, so substantive due process could not be used to pursue the same claim.
3. The state-law false-arrest and false-imprisonment claim failed because it relied on the same unsupported conclusory allegation that Plaintiff was arrested without probable cause.
4. The complaint failed to state a municipal-liability claim because it did not allege facts plausibly showing an official policy, custom, practice, failure to train, ratification, or other County action that was the moving force behind a constitutional violation.
5. The complaint should be dismissed with leave to amend because the identified pleading deficiencies might be cured by additional factual allegations.

KEY QUOTATIONS

“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” (at 7)

“substantive due process, with its ‘scarce and open-ended’ ‘guideposts,’ can afford him no relief.” (at 8)

“First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively.”” (at 10)

FACTUAL BACKGROUND

Plaintiff alleged that Kern County Sheriff's deputies arrested him on October 17, 2020, for trespassing on property in Delano, California, without probable cause. He asserted claims under 42 U.S.C. § 1983 for Fourth Amendment violations, substantive due process, and municipal liability, as well as state-law false-arrest and false-imprisonment claims. The complaint alleged almost no facts concerning the circumstances of the arrest, the individual conduct of several defendants, or any County policy, custom, practice, ratification, or failure to train that caused the alleged constitutional violations.

PROCEDURAL HISTORY

Plaintiff filed the action in Kern County Superior Court on February 21, 2023. City of Delano removed the action to the Eastern District of California on March 23, 2023, and was later voluntarily dismissed with prejudice pursuant to stipulation. The appearing defendants moved to dismiss on April 3, 2023; Plaintiff opposed and Defendants replied. The court recommends dismissal with leave to amend and gives the parties 14 days to object.

DISPOSITION

other

CASES CITED

- N. Star Int'l v. Arizona Corporation Commission, 720 F.2d 578, 581 (9th Cir. 1983)
- Peck v. Hoff, 660 F.2d 371, 374 (8th Cir. 1981)
- Balistreri v. Pacifica Police Department, 901 F.2d 696, 699 (9th Cir. 1990)
- Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 533-34 (9th Cir. 1984)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Seven Arts Filmed Entertainment, Ltd. v. Content Media Corp. PLC, 733 F.3d 1251, 1254 (9th Cir. 2013)
- Daniels-Hall v. National Education Association, 629 F.3d 992, 998 (9th Cir. 2010)
- Boag v. MacDougall, 454 U.S. 364, 365 (1982) (per curiam)
- Hughes v. Rowe, 449 U.S. 5, 9 (1980)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)
- Benavidez v. County of San Diego, 993 F.3d 1134, 1144 (9th Cir. 2021)
- Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009)

- *Preschooler II v. Clark County School Board of Trustees*, 479 F.3d 1175, 1183 (9th Cir. 2007)
- *Harper v. City of Los Angeles*, 533 F.3d 1010, 1022 (9th Cir. 2008)
- *Yousefian v. City of Glendale*, 779 F.3d 1010, 1014 n.1 (9th Cir. 2015)
- *United States v. Lopez*, 482 F.3d 1067, 1072 (9th Cir. 2007)
- *Beck v. Ohio*, 379 U.S. 89, 91 (1964)
- *O'Doan v. Sanford*, 991 F.3d 1027, 1039 (9th Cir. 2021)
- *D.C. v. Wesby*, 583 U.S. 48, 56-57 (2018)
- *Lacey v. Maricopa County*, 693 F.2d 896, 918 (9th Cir. 2012)
- *Albright v. Oliver*, 510 U.S. 266, 268, 271, 273, 275 (1994)
- *Graham v. Connor*, 490 U.S. 386, 395 (1989)
- *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992)
- *Awabdy v. City of Adelanto*, 368 F.3d 1062, 1069 (9th Cir. 2004)
- *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 690-91 (1978)
- *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011)
- *Sabra v. Maricopa County Community College District*, 44 F.4th 867, 883 (9th Cir. 2022)
- *Gordon v. County of Orange*, 6 F.4th 961, 973 (9th Cir. 2021)
- *A.E. ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012)
- *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)
- *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000)
- *Doe v. United States*, 58 F.3d 494, 397 (9th Cir. 1995)
- *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007)
- *Lacey v. Maricopa County*, 693 F.3d 927 (9th Cir. 2012)
- *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

Wachs v. City of Delano

PER CURIAM.

1 2 3 4

5 UNITED STATES DISTRICT COURT

6 EASTERN DISTRICT OF CALIFORNIA

7 8 PATRICK WACHS, Case No. 1:23-cv-00445-KES-CDB 9 Plaintiff, FINDINGS AND
RECOMMENDATIONS

TO GRANT DEFENDANTS' MOTION TO

10 v. DISMISS WITH LEAVE TO AMEND

11 COUNTY OF KERN, et al., (Doc. 12) 12 Defendants.1 14-DAY OBJECTION PERIOD

13 ORDER VACATING SCHEDULING

CONFERENCE

14 15 16 Pending before the undersigned is the motion of Defendants County of Kern, Joshua 17 Cabezuela, Juan Cuevas, Andrew Avila, and Phillip Garza (collectively, “Defendants”)2 to dismiss 18 the complaint of Plaintiff Patrick Wachs (“Plaintiff”), filed on April 3, 2023. 3 (Doc. 12). Plaintiff, 19 proceeding pro se, filed an opposition to the motion on April 18, 2023. (Doc. 15). Defendants filed 20 a reply on April 24, 2023. (Doc. 16). The undersigned deems the motion suitable for resolution 21 without hearing and oral argument. See E.D. Cal. Local Rule 230(g). For the reasons set forth 22 below, the undersigned will recommend Defendants’ motion to dismiss be granted with leave to 23 amend. 24 1 On March 30, 2023, pursuant to stipulation, Plaintiff and Defendant City of Delano 25 voluntarily dismissed City of Delano from this action with prejudice. (Doc. 9). 26 2 The other named Defendants (Dewar, Lara, and Sanchez) have not appeared in the action and are not joined to Defendants’ motion to dismiss. 27 3 On May 14, 2025, the assigned district judge referred the pending motion to dismiss to the

1 I. BACKGROUND4

2 Plaintiff, proceeding pro se, initiated this action with the filing of a complaint on February 3 21, 2023,5 in the Kern County Superior Court, case number BCV-23-100514. (Doc. 1). Since- 4 terminated City of Delano, later joined by Defendants, removed the action to this Court on March 5 23, 2023. (Docs. 1, 5). 6 In the complaint, Plaintiff asserts various causes of action under 42 U.S.C. § 1983 for 7 violation of the Fourth Amendment, substantive due process, and municipal liability under Monell, 8 and state law claims for false arrest and imprisonment. (See id.). Plaintiff seeks compensatory 9 damages, punitive damages, statutory damages, interest, reasonable attorneys’ fees6 and litigation 10 expenses, and costs. (Id. at 16-17). 11 Plaintiff alleges that his complaint arises from Defendants’ violations of his rights “in 12 connection with harassment and [his] false arrest ... on October 17, 2020.” (Id. ¶ 3). He alleges 13 that he resides in the City of Delano, California. (Id. ¶ 4). In addition to the above-named 14 Defendants, Plaintiff asserts claims against Does “1-5” who are “supervisory officers for the Kern 15 County Sheriff’s Office (“KCSO”) and Does “6-10” who are “managerial, supervisory, and 16 policymaking employees of the KCSO,” all of whom “were acting under color of law within the 17 course and scope of their duties For the KCSO.” (Id. ¶¶ 8, 9). Plaintiff alleges that on October 18 17, 2020, he was arrested without just case for trespass onto the property located at 30146 W. Cecil 19 Avenue, Delano, by Defendant Cabezuela “assisted by Defendants” Cuevas and Dewar, all of 20 whom are deputy sheriffs with KCSO. (Id. ¶ 18). No other facts are alleged in the complaint 21 pertaining to the other named Defendants (e.g., Lara, Sanchez, Avila, and Garza). Plaintiff alleges 22 that he “incurred attorney fees in defending himself against the charges of trespass, suffered loss of 23 income, mental anguish, damages to his reputation, impairment of his dignity, loss of freedom, pain 24 25 4 References to Plaintiff’s complaint are to the CM/ECF-assigned page number. (Doc. 1). 26 5 Although the notice of removal states the action was commenced on February 21, 2022, both the complaint and issued summons are dated 2023. (Doc. 1-1). 27 6 Plaintiff, who is proceeding pro se, is not entitled to attorney’s fees. *Kay v. Ehrler*, 499 1 and suffering, stress and

emotional trauma.” (Id. ¶ 19). Plaintiff alleges that on July 12, 2022, he filed a claim for damages with the County of Kern that was rejected on September 2, 2022. (Id. ¶¶ 3 20, 21). In his first claim for relief, Plaintiff asserts a Fourth Amendment detention and arrest claim under 42 U.S.C. § 1983 and alleges only the elements in support of the claim. (Id. ¶¶ 22-26). Plaintiff’s second (substantive due process), third (municipal liability – ratification), fourth (municipal liability – failure to train), fifth (municipal liability – unconstitutional custom or policy), sixth (false arrest/false imprisonment) claims all appear to allege only the elements in support of those claims. (See id. at 10-16).

10 II. GOVERNING AUTHORITY

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests a complaint’s sufficiency and asks a court to dismiss a plaintiff’s complaint for failing “to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6); *N. Star Int’l v. Ariz. Corp. Comm’n.*, 720 F.2d 578, 581 (9th Cir. 1983) (citing *Peck v. Hoff*, 660 F.2d 371, 374 (8th Cir. 1981)). A complaint may be dismissed as a matter of law either for 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 (9th Cir. 1990) (citing *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 533-34 (9th Cir. 1984)). To survive a motion to dismiss under Rule 12(b)(6), a complaint must provide sufficient factual matter to state a claim to relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); see Fed. R. Civ. P. 8(a)(2) (a complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief). A complaint satisfies the plausibility requirement if it contains sufficient facts for the court to “draw [a] reasonable inference that the defendant is liable for the misconduct alleged.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, the court must accept as true all factual allegations put forth in the complaint and construe all facts and inferences in the light most favorable to the plaintiff. (citations omitted); *Hebbe v. Pliler*, 627 F.3d 338, 340 (9th Cir. 2010). The complaint need not include “detailed factual allegations,” but must include “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citations omitted). The Court is “not required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Seven Arts Filmed Entm’t, Ltd. v. Content Media 7 Corp. PLC*, 733 F.3d 1251, 1254 (9th Cir. 2013) (quoting *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010)). Further, while factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Finally, courts must construe pro se pleadings liberally and hold such pleadings to a less stringent standard than those drafted by attorneys. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); see *Hughes v. Rowe*, 449 U.S. 5, 9 (1980) (“It is settled law that the allegations of [a pro se litigant’s complaint] ‘however inartfully pleaded’ are held ‘to less stringent standards than formal pleadings drafted by lawyers . . .’” (quoting *Haines v.*

Kerner, 404 U.S. 519, 520 (1972))). 15 A court should dismiss a pro se complaint without leave to amend only if “it is absolutely clear that 16 the deficiencies of the complaint could not be cured by amendment.” *Akhtar v. Mesa*, 698 F.3d 17 1202, 1212 (9th Cir. 2012).

18 III. DISCUSSION

19 A. Parties’ Contentions 20 Defendants contend the complaint fails to state a claim upon which relief may be granted 21 because it asserts no facts. (Doc. 12 at 3). As to Claim 1, Defendants argue that Plaintiff’s 22 pleadings regarding false arrest do not “allege a single other fact about the circumstances of 23 Plaintiff’s arrest” such as “whether the Defendants arrested Plaintiff with or without a warrant.” 24 (Id. at 4). In conclusory fashion, Defendants contend Plaintiff’s other claims also fail to assert 25 sufficient factual allegations. (Id. at 4-5).⁷ 26 27 7 Defendants’ perfunctory, one-sentence argument that “the complaint does not allege facts plausibly showing a Monell claim” (Doc. 12 at 5) is particularly undeveloped. The Court will deem as forfeited any unrepresented or undeveloped arguments in any future filings. See 1 Plaintiff contends that each of his claims “adequately states a claim upon which relief can 2 be granted.” (Doc. 15 at 1). Plaintiff asserts that he “has adequately alleged the elements of his 3 claims and has provided measurable injury.” (Id. at 5). He argues that his complaint “provides 4 Defendants fair notice of the charges against them and the grounds therefor” and “[d]iscovery and 5 argument will add further detail later.” (Id. at 9). 6 B. Failure to State a Claim 7 As set forth further below, Plaintiff’s complaint fails to state sufficient factual allegations 8 to support any cognizable claim. The complaint alleges only that Plaintiff “was arrested without 9 just cause for trespass onto the property located at 30146 W. Cecil Avenue, Delano,” by Defendants 10 deputy sheriffs Cabezuela, Cuevas, and Dewar and that the County of Kern rejected his claim for 11 damages filed July 12, 2022, on September 2, 2022. (Doc. 1 ¶¶ 18, 20-21). The allegations 12 pertaining to each of Plaintiff’s six asserted claims simply parrot the elements of the claims -- the 13 complaint otherwise is void of any factual allegations that support or otherwise provide context 14 regarding Defendants’ alleged violations in the wrongful detention and false arrest and such other 15 conduct that resulted in the violation of his constitutional rights. (See id. at 9-16); *Iqbal*, 556 U.S. 16 at 678 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory 17 statements, do not suffice.”). 18 1. First, Second, and Sixth Claims for Relief - Individual Liability 19 To state a claim under § 1983, a plaintiff is required to show that (1) each defendant acted 20 under color of state law and (2) each defendant deprived him of rights secured by the Constitution 21 or federal law. *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021) (citing *Long 22 v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006)); *West v. Atkins*, 487 U.S. 42, 48 23 (1988). This requires the plaintiff to demonstrate that each defendant personally participated in the 24 deprivation of his rights. *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); 25 *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007). 26 “The Fourth Amendment protects “[t]he right of the people to be secure in their persons, 27 houses, papers, and effects, against unreasonable searches and seizures[.]” U.S. Const. Amend. IV. 1 v. *McCullan*, 443

U.S. 137, 143 (1979). Conversely, an arrest without probable cause violates the 2 Fourth Amendment and gives rise to a claim for damages under § 1983. *Harper v. City of Los Angeles*, 533 F.3d 1010, 1022 (9th Cir. 2008); see *Yousefian v. City of Glendale*, 779 F.3d 1010, 4 1014 n.1 (9th Cir. 2015) (absence of probable cause is an essential element of § 1983 false arrest 5 and malicious prosecution claims). Probable cause is measured by an objective standard based on 6 the information known to the arresting officer. *United States v. Lopez*, 482 F.3d 1067, 1072 (9th 7 Cir. 2007) (citing *Beck v. Ohio*, 379 U.S. 89, 91, (1964)). See *Hill v. Scott*, 349 F.3d 1068, 1072 8 (8th Cir. 2003) (“[S]ufficient probability, not certainty, is the touchstone of reasonableness under 9 the Fourth Amendment...”). To determine whether an officer had probable cause for an arrest, 10 courts “examine the events leading up to the arrest, and then decide whether these historical facts, 11 viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.” 12 *O’Doan v. Sanford*, 991 F.3d 1027, 1039 (9th Cir. 2021) (quoting *D.C. v. Wesby*, 583 U.S. 48, 56- 13 57 (2018) (internal citations and quotation omitted)). 14 Plaintiff’s first claim for relief pursuant to the Fourth Amendment for unlawful detention 15 and arrest fails to allege any facts as to whether Defendants arrested Plaintiff with or “without 16 probable cause or other justification” or any other circumstances surrounding the arrest. *Lacey v. 17 Maricopa Cnty.*, 693 F.2d 896, 918 (9th Cir. 2012). Plaintiff’s bare allegation that Defendants 18 “arrested him without probable cause” (Doc. 1 ¶ 23) merely parrots a legal conclusion that the 19 Court does not accept as true. *Iqbal*, 556 U.S. at 678. 20 Plaintiff’s second claim for relief pursuant to the Fourteenth Amendment for a violation of 21 substantive due process appears to rely on the same detention/arrest as Plaintiff’s first claim. 22 “[W]here a particular Amendment ‘provides an explicit textual source of constitutional protection’ 23 against a particular sort of government behavior, ‘that Amendment, not the more generalized notion 24 of “substantive due process,” must be the guide for analyzing these claims.’” *Albright v. Oliver*, 25 26 8 For the same reasons, Plaintiff’s sixth claim for relief for false arrest/false imprisonment fails given Plaintiff’s conclusory allegation without factual support that he was arrested without 27 probable cause. (Doc. 1 ¶ 58). See, e.g., *Jaramillo v. City of San Mateo*, 76 F. Supp. 3d 905, 928 (N.D. Cal. 2014) (“Courts analyze state false arrest and false imprisonment claims under the same 1 510 U.S. 266, 273 (1994) (quoting *Graham v. Connor*, 490 U.S. 386, 395, (1989)). Where, as here, 2 a plaintiff alleges a constitutional violation based on an officer’s arrest without probable cause, 3 “substantive due process, with its ‘scarce and open-ended’ ‘guideposts,’ can afford him no relief.” 4 *Id.* at 275 (quoting *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992)). Thus, not only is 5 Plaintiff’s second claim deficient for its failure to allege facts from which an inference may be 6 drawn that Defendants violated Plaintiff’s substantive due process rights, because the claim as 7 pleaded seeks to vindicate Plaintiff’s rights under the Fourth Amendment, Plaintiff may not plead 8 the same claim pursuant to the Fourteenth Amendment. See *Awabdy v. City of Adelanto*, 368 F.3d 9 1062, 1069 (9th Cir. 2004) (citing *Albright*, 510 U.S. at 268, 271). 10 2. Third, Fourth, and Fifth Claims for Relief - Municipal Liability 11 Plaintiff also fails to state claims for municipal

liability (Claims 3, 4, and 5) against 12 Defendant County of Kern and Does 1-10. 13 City or county governments, including departments within them, cannot be held liable under 14 section 1983 for the acts of an employee. *Monell v. Dep't of Soc. Servs. Of City of New York*, 436 U.S. 658, 691 (1978). Instead, local governments “can be sued directly under [Section] 1983 for 16 monetary, declaratory, or injunctive relief where ... the action that is alleged to be unconstitutional 17 implements or executes a policy statement, ordinance, regulation, or decision officially adopted 18 and promulgated by that body’s officers.” *Id.* at 690. “In order to establish liability for 19 governmental entities under *Monell*, a plaintiff must prove ‘(1) that the plaintiff possessed a 20 constitutional right of which she was deprived; (2) that the municipality had a policy; (3) that this 21 policy amounts to deliberate indifference to the plaintiff’s constitutional right; and (4) that the 22 policy is the moving force behind the constitutional violation.’” *Dougherty v. City of Covina*, 654 F.3d 892, 900 (9th Cir. 2011). 24 In general, Plaintiff could plead a *Monell* cause of action in one of three ways. First, he 25 could allege the County of Kern is liable for his constitutional injuries by acting “pursuant to an 26 expressly adopted official policy.” *Sabra v. Maricopa Cnty. Cmty. College Dist.*, 44 F.4th 867, 883 27 (9th Cir. 2022) (citing *Gordon v. Cnty. of Orange*, 6 F.4th 961, 973 (9th Cir. 2021)). Second, he 1 violation of his constitutional rights. *Id.* Third, he could plead liability if “the individual who 2 committed the constitutional tort was an official with final policy-making authority or such an 3 official ratified a subordinate’s unconstitutional decision or action and the basis for it.” *Id.* 4 Courts in the Ninth Circuit use a two-part test to evaluate whether factual allegations 5 regarding municipal liability are sufficiently pled: “First, to be entitled to the presumption of truth, 6 allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, 7 but must contain sufficient allegations of underlying facts to give fair notice and to enable the 8 opposing party to defend itself effectively.” *A.E. ex rel. Hernandez v. Cnty. of Tulare*, 666 F.3d 9 631, 637 (9th Cir. 2012) (quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011)). “Second, 10 the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such 11 that it is not unfair to require the opposing party to be subjected to the expense of discovery and 12 continued litigation.” *Id.* 13 Here, the complaint fails to sufficiently allege any policy, practice, or custom of County of 14 Kern or its “administrative arms” that is “the moving force behind [his alleged] constitutional 15 violation[s].” *Dougherty*, 654 F.3d at 900. Plaintiff’s claims under *Monell* cannot simply rely on 16 “mere conclusory statements” of an undefined policy of County of Kern to support cognizable 17 claims; without more, these claims fail as a matter of law. (See Doc. 1 ¶ 36 [“Upon information 18 and belief, a final policymaker has determined (or will determine) that the acts of Defendants 19 [deputies] were ‘within policy.’”], ¶ 42 [“The training policies of Defendants ... [County] were not 20 adequate to train its officers to handle the usual and recurring situations with which they must 21 deal.”], ¶ 50 [“Defendants [deputies] acted pursuant to an expressly adopted official policy or a 22 longstanding practice or custom of the Defendants [County]”], & ¶ 52 [Defendants ... [County and

23 Does 1-10], together with other ... [County] policymakers and supervisors, maintained, inter alia,

24 the following unconstitutional customs, practices, and policies:”). Although Plaintiff appears 25 to name a number of customs, practices, and policies under his fifth claim for relief, these 26 allegations are generalized and without sufficient factual support such that the Court is unable to 27 see how these policies specifically “amount[] to deliberate indifference to [Plaintiff’s] 1 Dougherty, 654 F.3d at 900; (see Doc. 1 ¶ 52(A) [“Providing inadequate training regarding and 2 employing and retaining deputy sheriff individuals such as Defendants ... whom ... Defendants 3 [County] at all times material herein knew or reasonably should have known had dangerous 4 propensities for abusing their authority”], ¶ 52(B) [“Inadequately supervising, training, controlling, 5 assigning, and disciplining ... deputies, and other personnel, ... whom Defendants ... knew or in 6 the exercise of reasonable care should have known had the aforementioned propensities and 7 character traits”], ¶ 52(C) [“Maintaining grossly inadequate procedures for reporting, supervising, 8 investigating, reviewing, disciplining, and controlling misconduct by ... deputies”], ¶ 52(D) 9 [“Failing to adequately discipline ... deputies ... for the above-referenced categories of misconduct, 10 that is tantamount to encouraging misconduct”], ¶ 52(E) [“Encouraging, accommodating, or 11 facilitating a ‘blue code of silence,’ ‘blue shield,’ ‘blue wall,’ ‘blue curtain,’ ‘blue veil,’ or simply 12 ‘code of silence,’ pursuant to which deputies do not report other deputies’ errors, misconduct, or 13 crimes.”], & ¶ 52(F) [“Maintaining a policy of inaction and an attitude of indifference towards 14 soaring numbers of deputy misconduct[.]”). Plaintiff must allege facts that show how these 15 policies, customs, or practices resulted in the constitutional violations he alleges to have suffered. 16 Thus, even liberally construing the complaint’s allegations, the undersigned finds Plaintiff 17 fails to state a claim against Defendants upon which relief may properly be granted. The 18 undersigned therefore will recommend the Court grant Defendants’ motion to dismiss. 19 C. Leave to Amend

20 Rule 15 provides that “leave [to amend] shall be freely given when justice so requires.”

21 Fed. R. Civ. P. 15(2). However, district courts are only required to grant leave to amend if a 22 complaint can be saved. *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000). When a complaint 23 cannot be cured by additional facts, leave to amend need not be provided. *Doe v. United States*, 58 24 F.3d 494, 397 (9th Cir. 1995). 25 Plaintiff requests in his opposition that “in the event [Defendants’] motion is granted,” he 26 be allowed to “amend or refile his complaint.” (Doc. 15 at 9). As set forth above, the complaint 27 fails to state any claim as a matter of law. Because Plaintiff may be able to cure the identified 1 If Plaintiff wishes to file a first amended complaint, any such amended complaint should be 2 brief, Fed. R. Civ. P. 8(a), but it must state what each named defendant did that led to the deprivation 3 of Plaintiff’s constitutional rights, *Iqbal*, 556 U.S. at 678-79. As set forth above, Plaintiff has failed 4 to make any factual allegations regarding four of the named Defendants (Lara, Sanchez, Avila, and 5 Garza) and they are subject to dismissal unless Plaintiff alleges their individual actions and 6 involvement in the claimed

constitutional violations. Relatedly, although Plaintiff names numerous 7 Doe defendants as “supervisory” or “policymaking employees” (Doc. 1 ¶¶ 8-9), there are no factual 8 allegations concerning even the general nature of the supervisory or policymaking positions each 9 Doe defendant allegedly occupied and what his/her involvement was in the alleged constitutional 10 violations. 11 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated 12 claims in his amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no 13 “buckshot” complaints). 14 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint. 15 *Lacey*, 693 F.3d at 927. Therefore, an amended complaint must be “complete in itself without 16 reference to the prior or superseded pleading.” Local Rule 220

17 IV. CONCLUSION AND RECOMMENDATION

18 Based on the foregoing, the undersigned RECOMMENDS that: 19 1. Defendants’ motion to dismiss (Doc. 12) be GRANTED. 20 2. Plaintiff’s complaint (Doc. 1) be DISMISSED with leave to amend. 21 These Findings and Recommendations will be submitted to the U.S. District Judge assigned 22 to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served 23 with a copy of these Findings and Recommendations, any party may file written objections with 24 the Court. Local Rule 304(b). The document should be captioned, “Objections to Magistrate 25 Judge’s Findings and Recommendations” and shall not exceed 15 pages without leave of Court 26 and good cause shown. The Court will not consider exhibits attached to the Objections. To the 27 extent any party wishes to refer to any exhibit(s), that party should reference the exhibit in the 1 | exhibit with specificity. Any pages filed in excess of the 15-page limitation may be disregarded by 2 | the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 3 | 636(b)(1)(C). A party’s failure to file any objections within the specified time may result in the 4 | waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). > | IT IS SO ORDERED. ° Dated: _ June 10, 2025 | hannD Rr

7 UNITED STATES MAGISTRATE JUDGE

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