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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD EVANS,

Plaintiff,

v.

COUNTY OF TRINITY, a municipal
corporation; COLLEEN MURRAY; and
DOES 1-10,

Defendants.

No. 2:18-cv-00083-TLN-JDP

ORDER

This matter is before the Court on Defendants County of Trinity (“County”) and Colleen Murray’s (“Murray”) (collectively, “Defendants”) Motion to Dismiss. (ECF No. 26.) Plaintiff Ronald Evans (“Plaintiff”) opposed the motion. (ECF No. 27.) Defendants replied. (ECF No. 29.) For the reasons discussed herein, the Court GRANTS Defendants’ Motion to Dismiss.

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1 **I. FACTUAL AND PROCEDURAL BACKGROUND**¹

2 Plaintiff was arrested after ten pounds of medical marijuana was found in his vehicle and
3 confiscated. (ECF No. 22 at 2.) Plaintiff pleaded guilty to a vehicle code violation in Trinity
4 County Superior Court. (*Id.* at 2.) On January 24, 2017, the state court found that Plaintiff
5 lawfully possessed the marijuana under California law and ordered the return of Plaintiff's
6 marijuana. (*Id.* at 2.) Plaintiff subsequently presented the court order to a County evidence
7 technician, who told Plaintiff that the marijuana would not be returned to him. (*Id.* at 6.) Murray,
8 the Deputy District Attorney assigned to the case, also told Plaintiff that his marijuana would not
9 be returned. (*Id.*)

10 On January 15, 2018, Plaintiff initiated this action against Defendants, asserting two
11 causes of action pursuant to 42 U.S.C. § 1983 ("§ 1983"): (1) claims against the individual
12 Defendants for depriving Plaintiff of his property without due process of law in violation of the
13 Fourteenth Amendment, taking his property without compensation in violation of the Fifth
14 Amendment, and unreasonably seizing his property in violation of the Fourth Amendment;² and
15 (2) a *Monell* claim against the County based on the underlying constitutional violations. (ECF
16 No. 1 at 6–7.)

17 On March 16, 2018, Defendants moved to dismiss the Complaint pursuant to Federal Rule
18 of Civil Procedure ("Rule") 12(b)(6). (ECF No. 6.) On August 6, 2019, the Court dismissed the
19 Complaint with leave to amend. (ECF No. 21.)

20 On September 4, 2019, Plaintiff filed the operative First Amended Complaint ("FAC").
21 (ECF No. 22.) On October 16, 2019, Defendants filed the instant Motion to Dismiss the FAC in
22 its entirety pursuant to Rule 12(b)(6). (ECF No. 26.)

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25 ¹ The following recitation of facts is taken, sometimes verbatim, from Plaintiff's First
26 Amended Complaint. (ECF No. 22.)

27 ² Plaintiff combined all the underlying constitutional violations into one cause of action in
28 his Complaint.

II. STANDARD OF LAW

1 Rule 8(a) requires that a pleading contain “a short and plain statement of the claim
2 showing that the pleader is entitled to relief.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678–79
3 (2009). Under notice pleading in federal court, the complaint must “give the defendant fair notice
4 of what the claim . . . is and the grounds upon which it rests.” *Bell Atlantic v. Twombly*, 550 U.S.
5 544, 555 (2007) (internal quotations omitted). “This simplified notice pleading standard relies on
6 liberal discovery rules and summary judgment motions to define disputed facts and issues and to
7 dispose of unmeritorious claims.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002).

8 On a motion to dismiss, the factual allegations of the complaint must be accepted as
9 true. *Cruz v. Beto*, 405 U.S. 319, 322 (1972). A court must give the plaintiff the benefit of every
10 reasonable inference to be drawn from the “well-pleaded” allegations of the complaint. *Retail*
11 *Clerks Int’l Ass’n v. Schermerhorn*, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not allege
12 “‘specific facts’ beyond those necessary to state his claim and the grounds showing entitlement to
13 relief.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads
14 factual content that allows the court to draw the reasonable inference that the defendant is liable
15 for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556).

16 Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of
17 factual allegations.” *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir.
18 1986). While Rule 8(a) does not require detailed factual allegations, “it demands more than an
19 unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A
20 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the
21 elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*, 556 U.S. at
22 678 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory
23 statements, do not suffice.”). Moreover, it is inappropriate to assume the plaintiff “can prove
24 facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not
25 been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459
26 U.S. 519, 526 (1983).

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1 Ultimately, a court may not dismiss a complaint in which the plaintiff has alleged “enough
2 facts to state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 697 (quoting
3 *Twombly*, 550 U.S. at 570). Only where a plaintiff fails to “nudge[] [his or her] claims . . . across
4 the line from conceivable to plausible[,]” is the complaint properly dismissed. *Id.* at 680. While
5 the plausibility requirement is not akin to a probability requirement, it demands more than “a
6 sheer possibility that a defendant has acted unlawfully.” *Id.* at 678. This plausibility inquiry is “a
7 context-specific task that requires the reviewing court to draw on its judicial experience and
8 common sense.” *Id.* at 679.

9 In ruling upon a motion to dismiss, the court may consider only the complaint, any
10 exhibits thereto, and matters which may be judicially noticed pursuant to Federal Rule of
11 Evidence 201. *See Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988); *Isuzu*
12 *Motors Ltd. v. Consumers Union of United States, Inc.*, 12 F. Supp. 2d 1035, 1042 (C.D. Cal.
13 1998).

14 If a complaint fails to state a plausible claim, “[a] district court should grant leave to
15 amend even if no request to amend the pleading was made, unless it determines that the pleading
16 could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130
17 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 484, 497 (9th Cir. 1995)); *see*
18 *also Gardner v. Marino*, 563 F.3d 981, 990 (9th Cir. 2009) (finding no abuse of discretion in
19 denying leave to amend when amendment would be futile). Although a district court should
20 freely give leave to amend when justice so requires under Rule 15(a)(2), “the court’s discretion to
21 deny such leave is ‘particularly broad’ where the plaintiff has previously amended its
22 complaint[.]” *Ecological Rights Found. v. Pac. Gas & Elec. Co.*, 713 F.3d 502, 520 (9th Cir.
23 2013) (quoting *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004)).

24 **III. ANALYSIS**

25 A. Fifth and Fourteenth Amendment Claims

26 In his FAC, Plaintiff asserts § 1983 claims against the individual Defendants for violating
27 the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth
28

1 Amendment.³ (ECF No. 22 at 9.) Defendants move to dismiss both claims on the basis that
2 Plaintiff has not identified a federally protected property interest.⁴ (See ECF. 26 at 5.)
3 Specifically, Defendants argue Plaintiff has “no cognizable federal property interest in marijuana
4 *for any purpose.*” (*Id.*) In opposition, Plaintiff contends that federal law does not preempt state
5 law in the field of marijuana regulation and that California state law protects Plaintiff’s
6 possession of marijuana. (See ECF No. 27 at 2–4.) The Court addresses the Fifth Amendment
7 claim first, then turns to the Fourteenth Amendment claim.

8 *i. Fifth Amendment Claim*

9 The Takings Clause of the Fifth Amendment prohibits the government from taking
10 “private property . . . for public use, without just compensation.” U.S. Const. amend. V. To
11 assert a claim under the Takings Clause, “a plaintiff must first demonstrate that he possesses a
12 ‘property interest’ that is constitutionally protected.” *Schneider v. California Dep’t of Corr.*, 151
13 F.3d 1194, 1198 (9th Cir. 1998). State law, as well as federal law, can create a property interest.
14 See *id.* at 1200–01. However, although “state law creates a property interest, not all state-created
15 rights rise to the level of a constitutionally protected interest.” *Brady v. Gebbie*, 859 F.2d 1543,
16 1548 n.3 (9th Cir. 1988).

17 Plaintiff asserts Defendants violated the Fifth Amendment by taking Plaintiff’s marijuana
18 without compensation. (ECF No. 22 at 9.) Plaintiff argues that California state law protects his
19 possession of marijuana. (ECF No. 27 at 3–4.) However, even construing all reasonable
20 inferences in Plaintiff’s favor, Plaintiff fails to articulate how his state-defined right to possess
21 marijuana “rise[s] to the level of a constitutionally protected interest.” Indeed, despite Plaintiff’s

22 ³ In the Complaint, Plaintiff explicitly brought a Fourth Amendment claim under § 1983.
23 (ECF No. 1 at 6.) This claim was dismissed with leave to amend. (ECF No. 21.) In the FAC,
24 Plaintiff does not explicitly reassert his Fourth Amendment claim. (See ECF No. 22.) Plaintiff
25 only vaguely asserts that his right “[t]o be free from unreasonable seizures” was violated and
26 provides no factual allegations to support this conclusion. (*Id.* at 8–9.) It also bears mentioning
27 that neither party addresses a Fourth Amendment claim in their briefing on the instant motion.
28 Therefore, it appears Plaintiff has withdrawn his Fourth Amendment claim.

⁴ Defendants raise several other grounds for dismissal. However, because the Court finds
that Plaintiff fails to state a claim for any of the alleged constitutional violations, the Court need
not and does not address Defendants’ alternative arguments.

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