UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SA CV 19-388 PA (JDEx)	Date	October 28, 2019
Title	Housing is a Human Right Orange County, et al. v. County of Orange, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE	
Kamilla Sali-Suleyman	Not Reported	N/A
Deputy Clerk	Court Reporter	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: IN CHAMBERS - COURT ORDER

Before the Court are Motions to Dismiss filed by defendants City of San Clemente ("San Clemente") (Docket No. 100) and County of Orange ("Orange County") (Docket No. 101). Both San Clemente and Orange County challenge the sufficiency of the Second Amended Complaint ("2nd AC") filed by plaintiffs Housing is a Human Right Orange County ("HHROC"), Emergency Shelter Coalition ("ESC"), Duane Nichols ("Nichols"), and Darren James ("James") (collectively "Plaintiffs"). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that these matters are appropriate for decision without oral argument. The hearing calendared for October 28, 2019, is vacated, and the matters taken off calendar.

I. Factual and Procedural Background

This action was initially filed on February 27, 2019, by three individuals experiencing homelessness and three organizations dedicated to the provision of services for unsheltered persons on behalf of themselves and a putative class against Orange County and five cities located in the southern portion of Orange County. Those plaintiffs filed a First Amended Complaint ("1st AC") as a matter of right on May 13, 2019. San Clemente and the other cities named as defendants in the 1st AC filed Motions to Dismiss that pleading. During the pendency of those Motions, the Court ordered the parties to show cause why the claims against the five separate cities were properly joined and why the Court should exercise supplemental jurisdiction over some of the state law claims contained in the 1st AC. Following completion of the briefing on both the Order to Show Cause and the Motions to Dismiss, the Court, on August 12, 2019, concluded that the cities were not properly joined and therefore dropped the claims asserted against the cities of Irvine, Aliso Viejo, Dana Point, and San Juan Capistrano. The Court also declined to exercise supplemental jurisdiction over two of the state law claims asserted in the 1st AC, granted San Clemente's Motion to Dismiss the 1st AC's remaining claims with leave to amend, and dismissed with leave to amend the claims of HHROC, ESC, and Orange County

Catholic Worker for lack of standing. In granting leave to amend, the Court ordered that the 2nd AC "shall not include any new or different defendants, claims, causes of action, or legal theories other than those specifically authorized in [the Court's August 12, 2019] Order, without leave of this Court."

Plaintiffs filed their 2nd AC on September 16, 2019. Like the original Complaint and 1st AC, the 2nd AC relies heavily on the Ninth Circuit's decision in Martin v. City of Boise, 920 F.3d 584 (9th Cir. 2019), in which the Ninth Circuit concluded that "the Eighth Amendment prohibits the imposition of criminal penalties for sitting, sleeping, or lying outside on public property for homeless individuals who cannot obtain shelter." Id. at 616. The Ninth Circuit stated that "just as the state may not criminalize the state of being 'homeless in public places,' the state may not 'criminalize conduct that is an unavoidable consequence of being homeless — namely sitting, lying, or sleeping on the streets.'" Id. at 617 (quoting Jones v. City of Los Angeles, 444 F.3d 1118, 1137 (9th Cir. 2006), vacated, 505 F.3d 1006 (2007)). The Ninth Circuit clarified, however, that its "holding is a narrow one" and "'we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets . . . at any time and at any place.'" Id. (quoting Jones, 444 F.3d at 1138). As the Ninth Circuit panel explained:

> Naturally, our holding does not cover individuals who do have access to adequate temporary shelter, whether because they have the means to pay for it or because it is realistically available to them for free, but who choose not to use it. Nor do we suggest that a jurisdiction with insufficient shelter can never criminalize the act of sleeping outside. Even where shelter is unavailable, an ordinance prohibiting sitting, lying, or sleeping outside at particular times or in particular locations might well be constitutionally permissible. See Jones, 444 F.3d at 1123. So, too, might an ordinance barring the obstruction of public rights of way or the erection of certain structures. Whether some other ordinance is consistent with the Eighth Amendment will depend, as here, on whether it punishes a person for lacking the means to live out the "universal and unavoidable consequences of being human" in the way the ordinance prescribes. Id. at 1136.

Id. at 617 n.8. According to the Ninth Circuit, "as long as there is no option of sleeping indoors, the government cannot criminalize indigent, homeless people for sleeping outdoors, on public property, on the false premise they had a choice in the matter." Id. at 617.

The 2nd AC purports to state claims for: (1) violations of the Eighth and Fourteenth Amendments pursuant to 42 U.S.C. § 1983 by all Plaintiffs against all Defendants; (2) violations of the Fifth and Fourteenth Amendments pursuant to 42 U.S.C. § 1983 by plaintiff James against San Clemente and Does 1-4; and (3) violations of the Fourth and Fourteenth Amendments by James against San Clemente. Unlike the 1st AC, the 2nd AC is not brought on behalf of a putative class, and Orange County Catholic Worker and Bruce Stroebel are no longer named plaintiffs. The 2nd AC also does not include several claims that the Court dismissed from the 1st AC with leave to amend. The claims that are not included in the 2nd AC that Plaintiffs had leave to amend are: (1) violations of the First and Fourth Amendments pursuant to 42 U.S.C. § 1983; (2) violations of the Due Process Clause of the Fourteenth Amendment pursuant to 42 U.S.C. § 1983; (3) violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12132 & 12133; (4) liability pursuant to California Civil Code section 815.6 for violating the Fourteenth Amendment, California Government Code Section 65583, Article I, section 7 of the California Constitution, and California Civil Code section 52.1; and (5) violations of California Civil Code section 52.1. The Court dismisses Plaintiffs' abandoned federal claims for violations of the First and Fourth Amendments, ADA, and Fourteenth Amendment with prejudice. The Court dismisses Plaintiffs' abandoned state law claims and the claims of Stroebel and Orange County Catholic Worker without leave to amend and without prejudice.

In their Motions to Dismiss, San Clemente and Orange County challenge the sufficiency of Plaintiffs' claim for violations of the Eighth and Fourteenth Amendments and contend that HHROC and ESC have not cured their deficient standing allegations. San Clemente additionally contends that James' claim for violations of the Fifth and Fourteenth Amendment fails to state a viable claim for municipal liability and that James' claim arising under the Fourth and Fourteenth Amendments violates the Court's order that the 2nd AC "shall not include any new or different defendants, claims, causes of action, or legal theories other than those specifically authorized" by the Court.

II. Legal Standards

A. Federal Rule of Civil Procedure 12(b)(1)

Article III of the United States Constitution requires that a litigant have standing to invoke the power of a federal court. Because Article III's standing requirements limit subject matter jurisdiction, a plaintiff's standing to pursue a claim is properly challenged by a Federal Rule of Civil Procedure 12(b)(1) motion to dismiss. See Chandler v. State Farm Mut. Auto. Ins. Co., 598 F.3d 1115, 1121-22 (9th Cir. 2010). For the purpose of ruling on a motion to dismiss

for lack of standing, the Court must accept as true all material allegations of the complaint and must construe the complaint in favor of the complaining party. Maya v. Centex Corp., 658 F.3d 1060, 1068 (9th Cir. 2011).

Rule 12(b)(1) jurisdictional attacks can be either facial or factual. In a facial attack, the allegations are presumed true and the "challenger asserts that the[y] are insufficient on their face to invoke federal jurisdiction." Safe Air For Everyone v. Meyer, 373 F. 3d 1035, 1039 (9th Cir. 2004). "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." Id. Courts should refrain from resolving factual issues where "the jurisdictional issue and substantive issues are so intertwined that the question of jurisdiction is dependent on the resolution of factual issues going to the merits." Augustine v. United States, 704 F.2d 1074, 1077 (9th Cir. 1983); see also Safe Air, 373 F. 3d at 1039; Williston Basin Interstate Pipeline Co. v. An Exclusive Gas Storage Leasehold & Easement, 524 F. 3d 1090, 1094 (9th Cir. 2008) ("As a general rule, when 'the question of jurisdiction and the merits of the action are intertwined,' dismissal for lack of subject matter jurisdiction is improper.").

The Supreme Court has held that to have standing under the Constitution, a party must show it has suffered an "injury in fact," that there is a "causal connection between the injury" and the defendant's complained-of conduct, and that it is likely "that the injury will be redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136–37, 119 L. Ed. 2d 351 (1992). In Spokeo v. Robins, __ U.S. __, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016), the Supreme Court explained:

> Our cases have established that the "irreducible constitutional minimum" of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements.

136 S. Ct. at 1547. At the pleading stage, "the plaintiff must 'clearly . . . allege facts demonstrating' each element." Id. (quoting Warth v. Seldin, 422 U.S. 490, 518, 95 S. Ct. 2197, 2215, 45 L. Ed. 2d 343 (1975)).

To demonstrate an "injury in fact," a plaintiff must establish an "invasion of a legally protected interest which is (a) concrete and particularized [citations] and (b) 'actual or imminent,

not "conjectural" or 'hypothetical.'" Lujan, 504 U.S. at 560, 112 S. Ct. at 2136 (citations omitted). An organization has "'direct standing to sue [when] it show[s] a drain on its resources from both a diversion of its resources and frustration of its mission.'" Fair Hous. Council of San Fernando Valley v. Roommate.com, LLC, 666 F.3d 1216, 1219 (9th Cir. 2012) (quoting Fair Hous. of Marin v. Combs, 285 F.3d 899, 905 (9th Cir. 2002)). An organization "cannot manufacture the injury by incurring litigation costs or simply choosing to spend money fixing a problem that otherwise would not affect the organization at all. It must instead show that it would have suffered some other injury if it had not diverted resources to counteracting the problem." La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest, 624 F.3d 1083, 1088 (9th Cir. 2010).

B. Federal Rule of Civil Procedure 12(b)(6)

Generally, plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for "failure to state a claim upon which relief can be granted," they also require all pleadings to be "construed so as to do justice." Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to "'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)). The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp. , 108 F.3d 246, 248-49 (9th Cir. 1997) ("The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.") (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that "a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery." Twombly, 550 U.S. at 561, 127 S. Ct. at 1968 (internal quotation omitted). Instead, the Court adopted a "plausibility standard," in which the complaint must "raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction]." Id. at 556, 127 S. Ct. at 1965. For a complaint to meet this standard, the "[f]actual allegations must be enough to raise a right to relief above the speculative level." Id. at 555, 127 S. Ct. at 1965 (citing 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action") (alteration in original)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) ("'All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.'") (quoting Burgert v.

Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555, 127 S. Ct. at 1964-65 (internal quotations omitted). In construing the Twombly standard, the Supreme Court has advised that "a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." Ashcroft v. Iqbal, 556 U.S. 662, 679, 129 S. Ct. 1937, 1950, 173 L. Ed. 2d 868 (2009).

III. Analysis

Although it is unclear from the 2nd AC, which includes in its prayer for relief a request for a "declaratory judgment that Defendants' policies, practices and conduct as alleged herein violate Plaintiffs' rights under the United States Constitution," Plaintiffs' Opposition to San Clemente's Motion to Dismiss clarifies: "In their Second Amended Complaint, Plaintiffs removed all claims for prospective relief, the class allegations, and pursue only damages claims on behalf of Plaintiffs Nichols, James, HHROC and the Emergency Shelter Coalition." (Opp'n at 1:2-4.)

A. Standing of the Entity Plaintiffs

In granting San Clemente's Motion to Dismiss the 1st AC, the Court concluded that HHROC and ESC had not alleged well-pleaded allegations plausibly suggesting that San Clemente's actions and omissions have caused a drain on the organizations' resources "from both a diversion of [the entities'] resources and frustration of [their] mission." See Fair Hous. Council of San Fernando Valley, 666 F.3d at 1219. Like the 1st AC, the 2nd AC alleges that HHROC "is required to shift and expend resources to providing immediate direct services . . . and redirected its time and money from its primary focus of achieving supportive, affordable and permanent housing for people experiencing homelessness in the County." (2nd AC ¶ 65.) The 2nd AC alleges that ESC and its members "share a common goal to establish a year-round emergency shelter and resource center in San Clemente to provide people experiencing homelessness with a safe place to sleep, engage in fundamental daily life activities and obtain counseling and referral services. . . . . Because of the lack of resources throughout South County, ESC and its board members provide assistance to persons experiencing homelessness in the region." (Id. at ¶ 66.)

These allegations are identical to the allegations in the 1st AC that the Court found were insufficient to plausibly allege that the entities have standing to pursue their claims. As San Clemente has repeatedly observed, HHROC and ESC have not alleged that San Clemente has an affirmative constitutional obligation to provide shelter to individuals experiencing homelessness. Martin specifically states that municipalities have no such obligation. See 920 F.3d at 617. The 2nd AC does not allege that any member of HHROC or ESC has been threatened with arrest. Nor do the organizational plaintiffs allege an injury or otherwise explain how they have standing to pursue an Eighth Amendment claim for damages. At most, HHROC and ESC allege that because San Clemente has no permanent shelter for individuals experiencing homelessness — which is not a violation of the Eighth Amendment or any other provision of the Constitution or federal law — they have provided services to this vulnerable population. Such allegations do not adequately allege the "causal connection between the injury" and the defendant's complained-of conduct, or that it is likely "that the injury will be redressed by a favorable decision." Lujan, 504 U.S. at 560-61, 112 S. Ct. at 2136–37, 119 L. Ed. 2d 351. Nor do the organizational standing allegations contained in the 2nd AC satisfy Plaintiffs' burden to "clearly allege" facts demonstrating each element of standing. Spokeo, 136 S. Ct. at 1547. Because the Court provided HHROC and ESC with an opportunity to cure these deficiencies, and they instead repeated the identical insufficient allegations, the Court concludes that HHROC and ESC lack standing to pursue the claims they have attempted to assert in this action and that further leave to amend would be futile. The Court therefore dismisses HHROC and ESC for lack of standing without leave to amend.

B. Viability of Plaintiffs' Claims

1. Eighth and Fourteenth Amendment Claim

Plaintiffs have clarified that the 2nd AC seeks only damages for defendants' alleged violations of the Eighth and Fourteenth Amendments. According to the 2nd AC, defendants violated the Eighth Amendment by "rous[ing] and threatening] unhoused people such as James and Nichols with arrest." (2nd AC at ¶ 87.) The 2nd AC also alleges that defendants violated Plaintiffs' "substantive due process rights" when defendants "threatened] them with citation and arrest for sleeping and keeping their property in public places when there is inadequate shelter available." (Id. at ¶ 88.) Plaintiffs allege that defendants have "a custom, policy, and/or practice of encouraging its officers, employees and agents to threaten enforcement of City ordinances and citations and arrest of homeless persons for the unavoidable behavior of sleeping or having property in public based on their unhoused status. This custom, policy and/or practice harmed both Nichols and James by depriving them of sleep and causing them emotional distress." (Id. at ¶ 90.)

The Court dismissed the 1st AC's claim for violations of the Eighth and Fourteenth Amendments because the 1st AC did not allege that San Clemente or Orange County, through its Sheriff's Deputies, had ever cited Nichols or James for violations of San Clemente's anti-camping ordinance, and they had therefore not suffered a violation of their constitutional rights. See West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 2254-55, 101 L. Ed. 2d 420 (1981) ("To state a claim under § 1983, a plaintiff must allege a violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law."). Like the 1st AC's allegations, the 2nd AC's allegations of threats of arrest and disturbing an unhoused individual's sleep are insufficient to state a claim for damages. See Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987) ("A mere threat . . . trivializes the eighth amendment to believe a threat constitutes a constitutional wrong. . . . We find no case that squarely holds a threat to do an act prohibited by the Constitution is equivalent to doing the act itself."). Indeed, by requiring the initiation of the criminal process to state a claim for damages for an Eighth Amendment violation, Martin rejects the precise claim Plaintiffs have asserted. See 920 F.3d at 614 ("For those rare Eighth Amendment challenges concerning the state's very power to criminalize particular behavior or status, then, a plaintiff need demonstrate only the initiation of the criminal process against him, not a conviction.").

To the extent Plaintiffs additionally assert a Fourteenth Amendment substantive due process claim, that claim similarly fails because a threat to violate such rights does not deprive one of those rights. See Gaut, 810 F.2d at 925; see also Corales v. Bennett, 567 F.3d 554, 565 (9th Cir. 2009) ("Under Ninth Circuit law, Plaintiffs do not have a retaliation claim based on threats of discipline for First Amendment activity if that threat is itself based upon lawful consequences and is not actually administered."). Plaintiffs' substantive due process claim additionally fails because, as the Supreme Court has stated: "Where a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular sort of government behavior, 'that Amendment, not the more generalized notion of 'substantive due process,' must be the guide of analyzing these claims.'" Albright v. Oliver, 510 U.S. 266, 273, 114 S. Ct. 807, 813, 127 L. Ed. 2d 114 (1994) (quoting Graham v. Connor, 490 U.S. 386, 395, 109 S. Ct. 1865, 1871, 104 L. Ed. 2d 443 (1989)). Here, Plaintiffs' claims are governed by the Eighth Amendment, not the Fourteenth Amendment's substantive due process clause. Moreover, an individual acting under color of law can only be liable for violating substantive due process rights if their conduct "shocks the conscience." See Nunez v. City of Los Angeles, 147 F.3d 867, 871 (9th Cir. 1998) ("The concept of 'substantive due process,' semantically awkward as it may be, forbids the government from depriving a person of life, liberty, or property in such a way that 'shocks the conscience' or 'interferes with rights implicit in the concept of ordered liberty.'") (citations omitted). Plaintiffs' allegations of threats of arrest and

rousing unhoused individuals do not rise to the level of "conscience shocking" and therefore fail to state a viable substantive due process claim. Finally, even if HHROC and ESC had sufficiently alleged facts supporting standing, they have failed to allege any facts that defendants' threats and enforcement activities have deprived the entities or their members of rights afforded under the Eighth and Fourteenth Amendments.

The Court therefore concludes that the 2nd AC has failed to state viable claims under the Eighth and Fourteenth Amendments on behalf of any of the Plaintiffs against any of the defendants. In filing the 2nd AC, Plaintiffs did not allege any new or different facts. Instead, in the Opposition to San Clemente's Motion, they urge the Court to "reconsider" its conclusion that defendants' alleged threats are insufficient to state a plausible claim for the deprivation of constitutional rights. Plaintiffs' request for reconsideration, without any new facts, change in law, any indication that the Court committed clear error or failed to consider material facts, is procedurally and substantively improper. See Local Rule 7-18. The Court therefore concludes that further leave to amend would be futile, and dismisses Plaintiffs' Eighth and Fourteenth Amendment claims without leave to amend.

2. James' Individual Claim for Violations of the Fifth and Fourteenth Amendments

The 1st AC's claim brought on behalf of James alleging violations of the Fifth and Fourteenth Amendments was asserted against San Clemente only. Despite the Court's specific order granting leave to amend, but stating that the 2nd AC "shall not include any new or different defendants, claims, causes of action, or legal theories other than those specifically authorized in this Order, without leave of this Court," the 2nd AC's claim for violations of the Fifth and Fourteenth Amendments is asserted against both San Clemente and "Does 1-4." Because James did not have leave to amend to add defendants to that claim, the 2nd AC's inclusion of the Doe defendants in that claim is unauthorized. The Court therefore strikes the addition of the Doe defendants to that claim.

Like the 1st AC, the 2nd AC alleges that in early February 2019, "all of [James'] possessions were taken from the location where he left them daily for two years." (2nd AC at ¶ 74.) According to the 2nd AC, James lost his possessions "on a day that the City was performing a cleaning at that location. He approached a person in the area that he understood to be a [San Clemente] City employee and part of the maintenance operation, asked about his possessions, and was informed that the City did not retain the property." (Id.)

"[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." Monell v. New York City Dept. of Soc. Servs., 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-38, 56 L. Ed. 2d 611 (1978); see also id. at 691, 98 S. Ct. at 2036 ("[A] municipality cannot be held liable under § 1983 on a respondeat superior theory."). "There are three ways to show a policy or custom of a municipality: (1) by showing 'a longstanding practice or custom which constitutes the 'standard operating procedure' of the local government entity;' (2) 'by showing that the decision-making official was, as a matter of state law, a final policymaking authority whose edicts or acts may fairly be said to represent official policy in the area of decision;' or (3) 'by showing that an official with final policymaking authority either delegated that authority to, or ratified the decision of, a subordinate.'" Menotti v. City of Seattle, 409 F.3d 1113, 1147 (9th Cir. 2005) (quoting Ulrich v. City & County of San Francisco, 308 F.3d 968, 984-85 (9th Cir. 2002)).

In the absence of a specific unconstitutional custom or policy, a plaintiff may attempt to impose liability on a municipality for a constitutional injury through a second route to municipal liability:

> [A] plaintiff need not allege that the municipality itself violated someone's constitutional rights or directed one of its employees to do so. Instead, a plaintiff can allege that through its omissions the municipality is responsible for a constitutional violation committed by one of its employees, even though the municipality's policies were facially constitutional, the municipality did not direct the employee to take the unconstitutional action, and the municipality did not have the state of mind required to prove the underlying violation.

Gibson v. County of Washoe, 290 F.3d 1175, 1186 (9th Cir. 2002) (citing City of Canton v. Harris, 489 U.S. 378, 387-89, 109 S. Ct. 1197, 1204-05, 103 L. Ed. 2d 412 (1989)). Under this second route to municipal liability, a plaintiff must show: (1) that a municipal employee violated the plaintiff's rights; (2) that the municipality has customs or policies that amount to deliberate indifference (as that phrase is defined by Canton, 489 U.S. at 387, 109 S. Ct. at 1204); and (3) that these policies were the moving force behind the violation of the plaintiff's constitutional rights, in the sense that the municipality could have prevented the violation with an appropriate policy. See Gibson, 290 F.3d at 1193. Under either method of establishing municipal liability,

an official policy or custom cannot be established by random acts or isolated events. Thompson v. City of Los Angeles, 885 F.2d 1439, 1443–44 (9th Cir. 1989).

Here, even assuming that James has plausibly alleged that someone employed by San Clemente took James' property in violation of his Fifth and Fourteenth Amendment rights, the 2nd AC does not allege any well-pleaded facts that San Clemente maintains an unconstitutional policy or custom. Indeed, San Clemente has requested that the Court take judicial notice of its ordinance that allows San Clemente to impound property that is left unattended for more than 24 hours and allows the owner of the property to recover it thereafter. See SCMC § 8.86.020. In reviewing the 2nd AC's allegations, the Court concludes that James does not allege well-pleaded facts that San Clemente has a policy that amounts to deliberate indifference. Instead, at most, James alleges that, on a single occasion, San Clemente took his belongings. Because the 2nd AC alleges only an isolated event, James' Monell claim against San Clemente fails to allege sufficient well-pleaded facts to state a viable claim. See Thompson, 885 F.2d at 1443-44. The Court reached the same conclusion when it dismissed James' identical claim alleged in the 1st AC. James has not alleged in the 2nd AC any new facts that plausibly support a Monell claim against San Clemente. Nor has James indicated that he has any additional facts he could allege to support a Monell claim. The Court therefore concludes that further leave to amend would be futile and dismisses James' claim brought against San Clemente pursuant to the Fifth and Fourteenth Amendments without leave to amend.

3. The 2nd AC's Purported Claim for Violations of the Fourth and Fourteenth Amendments

The 2nd AC also includes a claim brought by James against San Clemente that, like his claim brought pursuant to the Fifth and Fourteenth Amendments, seeks damages arising out of the alleged confiscation and destruction of his property by San Clemente. This claim was not asserted in the 1st AC. Nor did the Court grant James leave to amend to include this claim. The inclusion of this claim therefore violates the Court's order that the 2nd AC "shall not include any new or different defendants, claims, causes of action, or legal theories other than those specifically authorized in this Order, without leave of this Court." The Court therefore strikes the 2nd AC's third claim as having been added to the 2nd AC without authorization. The Court additionally notes that, even if the Court were to consider the merits of the claim, it suffers from the same defect as the 2nd AC's claim brought pursuant to the Fifth and Fourteenth Amendments. James has not alleged anything other than an isolated incident in support of his Fourth and Fourteenth Amendment claim. The Fourth and Fourteenth Amendment claim therefore fails to state a plausible Monell claim against San Clemente.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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Conclusion

For all of the foregoing reasons, the Court dismisses the claims of HHROC and ESC for lack of standing without leave to amend. The Court dismisses the 2nd AC's first claim for violations of the Eighth and Fourteenth Amendments, and second claim for violations of the Fifth and Fourteenth Amendments asserted against San Clemente, without leave to amend. The Court dismisses any claims of plaintiffs Orange County Catholic Worker and Bruce Stroebel without leave to amend and without prejudice. The Court dismisses Plaintiffs' abandoned federal claims for violations of the First and Fourth Amendments, ADA, and Fourteenth Amendment with prejudice. The Court dismisses Plaintiffs' abandoned state law claims without leave to amend and without prejudice. The Court strikes the 2nd AC's unauthorized addition of Does 1-4 to James' claim for violations of the Fifth and Fourteenth Amendments. The Court also strikes the 2nd AC's unauthorized third claim for violations of the Fourth and Fourteenth Amendments. Any other efforts by James or Nichols to assert new or different claims, causes of action, or legal theories against these defendants must be made through a Noticed Motion for Leave to Amend that shall include as an exhibit the proposed Third Amended Complaint. Any Motion for Leave to Amend must be filed by no later than November 18, 2019. Any proposed Third Amended Complaint shall not include any claim or plaintiff that this Court has dismissed without leave to amend. After November 18, 2019, if James or Nichols have not filed such a Motion, the Court will, without further warning, issue a Judgment dismissing this action.

IT IS SO ORDERED.