UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	2:14-cv-08909-SVW-PLA	Date	November 24, 2015
Title	*Judy Anne Mikovits v. Adam Garcia et al*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE	
Paul M. Cruz		N/A
Deputy Clerk		Court Reporter / Recorder
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
N/A		N/A

Proceedings: IN CHAMBERS ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [100], DISMISSING PLAINTIFF'S COMPLAINT UNDER RULE 8, AND DENYING DEFENDANTS' MOTIONS [109][113][114][115] AS MOOT.

Procedural Background

On November 17, 2014, plaintiff Judy Anne Mikovits ("Plaintiff" or "Mikovits") filed a *pro se* complaint against twelve named defendants and three unidentified Ventura County Deputy Sheriffs (collectively the "Defendants"). Dkt. 1. The case was initially assigned to Magistrate Judge Abrams, but was reassigned to this Court when Plaintiff retained counsel. Dkt. 76. The Court held a hearing on June 15, 2015, and dismissed the complaint, giving Plaintiff leave to amend. *See* Dkt. 89.

On July 27, 2015, Plaintiff filed her first amended complaint ("FAC"). Dkt. 92. In her FAC, Plaintiff alleges: (1) a host of constitutional violations, (2) unreasonable search and seizure without a warrant, (3) false arrest with a warrant, (4) unnecessary delay in processing and releasing, (5) false arrest without a warrant by a peace officer, (6) false arrest without a warrant by private citizens, (7) abuse of process, (8) fraud, (9) civil conspiracy, (10) intentional infliction of emotional distress, and (11) defamation. *See* FAC ¶¶ 128–86.

On August 13, 2015, Defendant Geoff Dean ("Dean"), the Ventura County Sheriff, filed a motion for summary judgment. Dkt. 100.

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Uncontroverted Facts

Plaintiff's FAC describes a vast conspiracy involving political corruption, organized crime, and scientific misconduct. But it is undisputed that Dean and the Ventura County Sheriff's Office ("VCSO") played a very limited role in the controversy.

On November 16, 2011, a Washoe County, Nevada Justice of the Peace issued an arrest warrant for Plaintiff, based on felony charges. Dkt. 79-1. The next day, a University of Nevada at Reno Police Officer filed a second criminal complaint in the Justice Court of Reno Township, County of Washoe. Dkt. 79-2. Dean and VSCO had no role in issuing the criminal complaint or the warrant.

On Friday November 18, 2011, Plaintiff was arrested in Ventura County, California. The arrest was not made by Dean or other VCSO personnel. VCSO maintains in internal database where it documents all VCSO contacts. Dkt. 100, Miller Decl. ¶¶ 6–7. If VSCO had any enforcement contact with Plaintiff, including an arrest or citation, documentation would be required and that contact would be entered into the database. *Id.* ¶ 12. VSCO had no record of any patrol contacts with Plaintiff. *Id.* ¶ 11.

On the day of her arrest, Plaintiff was booked at the VSCO Pre-trial Detention Facility. *Id.* ¶ 18. At some point during her incarceration, she was transferred to the Todd Road Jail Facility. *Id.* ¶ 24. She remained in VSCO custody until her release, several days later. *See id.* ¶ 19.

On Monday, November 21, 2011, a fugitive complaint was filed against Plaintiff, pursuant to California Penal Code § 1551.1. Dkt. 79-4. Plaintiff was arraigned on Tuesday, November 22, 2011. *Id.* She was represented by an attorney named Paul B. Tyler. *Id.* After the hearing, Plaintiff was remanded to VSCO custody. *See id.* Later that day, VSCO released Plaintiff from custody. Miller Decl. ¶ 19. Plaintiff was given instructions to return to Reno, Nevada and to turn herself into law enforcement authorities, the following Monday. Dkt. 121 ¶ 28.

The charges against Plaintiff in Nevada were subsequently dismissed. On June 11, 2012, the Washoe County District Attorney voluntarily dismissed the criminal complaint against Plaintiff without prejudice. Dkt. 109-3.

Plaintiff filed her initial complaint in this case, naming defendant Dean and others, on November 17, 2014. Dkt. 1.

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Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Application

Dean has produced substantial unrefuted evidence establishing his limited involvement in Plaintiff's claims.[1] The uncontroverted evidence establishes that her claim is now time barred.[2]

Plaintiff does not dispute that the applicable limitations period for her § 1983 claims against Dean is two years. *See Jackson v. Barnes*, 749 F.3d 755, 761 (9th Cir. 2014); Dkt. 120, 16–18. Instead Plaintiff argues that the statute of limitations is tolled because either (1) Dean was part of the conspiracy that did not conclude until July 22, 2015 or (2) criminal charges remained open against Plaintiff.

Plaintiff contends that her claims against Dean are not time barred because he may have been part of the larger conspiracy described in her FAC. *See* Dkt. 120, 13–16. But she has not introduced admissible evidence that could lead a reasonable fact finder to conclude that Dean was involved in a larger

[1] Plaintiff concedes that her claims for false arrest by a private party, abuse of process, and defamation against Dean should be dismissed. Dkt. 120, 2. But Plaintiff argues that more discovery is required for her other claims. *See id.* at 4.
[2] The Court notes that it is far from clear whether Plaintiff could have stated a claim against Dean, even assuming that her claim was not time barred.

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plot. Her allegations of processing irregularities are speculative, if not directly controverted. Though Plaintiff alleges that she was not photographed, not informed of her charges, denied access to counsel, and not seen by a magistrate immediately, *id.* at 13, these claims are contradicted by other evidence. On the next page of her filing, Plaintiff concedes that she was informed that she was being charged as a "fugitive from justice." *Id.* at 14. Dean provided Plaintiff with a photograph taken from her booking which she claims, without any evidentiary support, is in fact a forgery. Dkt. 128, 18. Plaintiff was represented by counsel at her arraignment. Dkt. 79-4. And as Dean explains, her arraignment took place within the time prescribed by California Penal Code § 825. Dkt. 134, 6–7; *see Youngblood v. Gates*, 246 Cal. Rptr. 775, 777 (Cal. Ct. App. 1988) (employing two-day rule under § 825). Dean also represents that he has provided Plaintiff with her fingerprint card and the audio recordings of multiple telephone calls made while she was in VCSO custody. Dkt. 134, 8. Plaintiff's uncontroverted allegations only establish that her time in jail was unpleasant and that she was not processed as fast as she could have been. This does not raise the reasonable inference that Dean violated Plaintiff's rights or had any involvement with a conspiracy.

Plaintiff's argument that telephone calls received by her husband while she was in VCSO custody raise a genuine issue of material fact as to Dean's involvement in a conspiracy with Harvey Whittemore are similarly unavailing.[3] First, even if accepted as true, the calls made to Plaintiff's husband would only support the inference that Harvey wanted Plaintiff's husband to believe that he had the power to get Plaintiff released from custody. He did not say that he had contacts within the VSCO or name Dean specifically. *See* Dkt. 120, 15–16. Second, Plaintiff's shifting allegations about the phone calls are inadmissible hearsay, not supported by a signed declaration with someone with personal knowledge of the content of the alleged phone calls. This unsupported allegation is not sufficient to authorize the extensive discovery that Plaintiff seeks to uncover whether Dean had some connection with the alleged conspiracy.

Undaunted, Plaintiff argues that even if Dean was not part of the greater conspiracy, she still has actionable claims against him because the statute of limitations should be tolled by California Government Code § 945.3. Dkt. 120, 17. Under § 945.3:

[3] According to the complaint, Harvey Whittemoe is an attorney and a powerful lobbyist in Nevada. Compl. ¶ 30. He recruited Plaintiff to join the Whittemore Peterson Institute on the campus of the University of Nevada, Reno. *Id.* ¶¶ 25–26. Plaintiff alleges that he played a leading role in the conspiracy to commit scientific misconduct with her research and to misuse the legal process to search and arrest Plaintiff. *See generally id.*

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> No person charged by indictment, information, complaint, or other accusatory pleading charging a criminal offense may bring a civil action for money or damages against a peace officer or the public entity employing a peace officer based upon conduct of the peace officer relating to the offense for which the accused is charged, including an act or omission in investigating or reporting the offense or arresting or detaining the accused, while the charges against the accused are pending before a superior court.
>
> Any applicable statute of limitations for filing and prosecuting these actions shall be tolled during the period that the charges are pending before a superior court.

Cal. Gov't Code § 945.3. But assuming, *arguendo*, that Plaintiff's criminal indictment in Nevada is the kind of proceeding that would have precluded Plaintiff from bringing an action against Dean during its pendency, it is uncontroverted that the Washoe County District Attorney voluntarily dismissed the criminal complaint against Plaintiff on June 11, 2012. In her supplemental affidavit, Plaintiff avers that after the charges were dismissed, her lawyer advised her that if she did not do anything illegal until October 16, 2015, the charges would be expunged from her record. Dkt. 120-2, ¶ 40. Plaintiff latches on to this advice and argues that it means the charges are still pending before a superior court within the meaning of § 945.3.[4] Dkt. 120, 17. Plaintiff offers no legal or textual support for this proposition.[5] Whether or not Plaintiff's criminal attorney's advice was sound, it cannot provide the basis for tolling under § 945.3. As the California Court of Appeal has recognized, "[t]he purpose of the statute is to prevent criminal defendants from using civil lawsuits to gain leverage in criminal plea bargaining." *Damjanovic v. Ambrose*, 4 Cal. Rptr. 2d 560, 563 (Cal. Ct. App. 1992). That rationale simply does not apply to claims that have been voluntarily dismissed.

Thus, there is no genuine issue of material fact and no reasonable fact finder could find against

[4] Of course, this would also mean that Plaintiff is barred from bringing her claim against Dean at this time. *See* § 945.3.

[5] Even if the tolling period could be reopened by the refiling of the same criminal complaint, it is undisputed that over two years passed between the dismissal of the criminal complaint on June 11, 2012 and when Plaintiff filed her complaint on November 17, 2014. *See Blunt v. Cnty. of Sacramento*, No. 204CV1743MCEDAD, 2006 WL 509539, at *5 (E.D. Cal. Mar. 2, 2006) (stating that the plain language of the statute excludes only the period that criminal charges are pending against the plaintiff).

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Dean. Defendant Dean's motion for summary judgment is granted.

Pleading Standard

Federal Rule of Civil Procedure 8 requires a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8. These factual allegations, accepted as true and construed in the plaintiff's favor, must state a plausible claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Daniel v. Cnty. of Santa Barbara*, 288 F.3d 375, 380 (9th Cir. 2002). Plausibility requires factual allegations that allow the Court to infer reasonably that the defendant is liable for the alleged misconduct—"labels and conclusions" or "recitation[s] of the . . . cause[s] of action will not do." *Iqbal*, 556 U.S. at 678.

Moreover, Rule 8(d), which requires "each averment of a pleading to be 'simple, concise, and direct,' applies to good claims as well as bad, and is a basis for dismissal independent of Rule 12(b)(6)." *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir. 1996) (citing *Nevijel v. North Coast Life Ins. Co.*, 651 F. 2d 671, 673 (9th Cir. 1981)). "Something labeled a complaint but . . . prolix in evidentiary detail, yet without simplicity, conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the essential functions of a complaint." *Id.* at 1180. The Court cannot be expected to "waste[] half a day in chambers preparing the 'short and plain statement' which Rule 8 obligated plaintiffs to submit." *Id.*

The Court understands that Plaintiff has written a book that discusses some of the events in this case, but the narrative of a novel is not the appropriate form for a complaint. The Court is not prepared to read an entire book to discern Plaintiff's legal allegations. Courts routinely dismiss complaints that similarly fail to specifically articulate causes of action or identifiable legal theories that support any claim of relief. *See, e.g.*, *Dema v. Arizona Dep't of Econ. Sec.*, No. CV-14-01887-PHX-JZB, 2014 WL 5820791, at *2 (D. Ariz. Nov. 10, 2014); *R.R. v. Oakland Unified Sch. Dist.*, No. CV-13-05069-KAW, 2014 WL 830222, at *3 (N.D. Cal. Feb. 28, 2014); *Allen v. Soc. Sec. Admin.*, No. 2:13-CV-01823-GMN, 2013 WL 5961195, at *2 (D. Nev. Nov. 5, 2013); *Roettgen v. Foston*, No. 13-CV-1101-GPC-BGS, 2013 WL 5347284, at *2 (S.D. Cal. Sept. 23, 2013); *Boparai v. Shinseki*, No. 1:12-CV-00789-LJO, 2012 WL 4755040, at *1 (E.D. Cal. Oct. 4, 2012); *Godhart v. Sharr*, No. CV-12-01005-PHX-FJM, 2012 WL 4359075, at *2 (D. Ariz. Sept. 21, 2012); *Crittenden v. Murphy*, No. CV-12-1854-PHX-LOA, 2012 WL 3960454, at *5 (D. Ariz. Sept. 10, 2012); *Palacios v. Fresno Cnty. Superior Court*, No. 1:09-CV-0554-OWW-DLB, 2009 WL 1107620, at *3 (E.D. Cal. Apr. 23, 2009).

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Accordingly, the Court dismisses the FAC without prejudice. The Plaintiff is advised to organize her complaint in a readable manner, with appropriate headers and omitting irrelevant narrative details. Plaintiff's claims should be organized so that they include the facts that form the basis of each claim without excessive incorporation by reference.

Order

1) Defendant Dean's motion for summary judgment [100] is GRANTED.
2) Plaintiff's FAC is DISMISSED WITHOUT PREJUDICE and leave to file an amended complaint within 21 days of this order.
3) Defendant Gammick's motion to dismiss [109] is DENIED as MOOT.
4) Defendants Garcia, McGuire, and Hunter's motion to strike [114] and motion to dismiss [113] are DENIED as MOOT.
5) Defendants Whittemore, Whittemore, Hillerby, Lombardi, Kinne, UNEVX, and WPI's motion to dismiss [115] is DENIED as MOOT.

SO ORDERED.

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