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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HUMAN RIGHTS DEFENSE CENTER,)	CASE NO. CV 17-4883-R
)	
Plaintiff,)	ORDER GRANTING DEFENDANTS’
)	MOTION TO DISMISS
v.)	
)	
COUNTY OF LOS ANGELES; et al.,)	
)	
Defendants.)	
)	

Before the Court is Defendants’ Motion to Dismiss, which was filed on August 25, 2017. (Dkt. No. 44). Having been fully briefed by both parties, this Court took the matter under submission on September 27, 2017.

Plaintiff publishes and distributes *Prison Legal News* (“*PLN*”), a monthly journal of corrections news and editorial content about legal issues affecting prisoners. *PLN* is distributed in approximately 2,200 correctional facilities throughout the country, including Men’s Central Jail (“*MCJ*”) in Los Angeles. Plaintiff also sends other written communications to inmates, including subscription renewal letters, informational brochure packets, and copies of court opinions. Defendants operate *MCJ*. Plaintiff sues the County of Los Angeles and thirteen individual defendants for their alleged roles in inhibiting distribution of *PLN* throughout *MCJ*. Plaintiff alleges violations of: 42 U.S.C. § 1983 based on the free speech and due process clauses of the

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1 Constitution, California's Bane Act, and the free speech and due process clauses of the California
2 Constitution. Defendants move to dismiss the entire Complaint as to the thirteen individuals and
3 the Bane Act claim as to all defendants under Federal Rule of Civil Procedure 12(b)(6).

4 Dismissal under Rule 12(b)(6) is proper when a complaint exhibits either "the lack of a
5 cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."
6 *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1988). Under the heightened
7 pleading standards of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*,
8 556 U.S. 662 (2009), a plaintiff must allege "enough facts to state a claim to relief that is plausible
9 on its face," so that the defendant receives "fair notice of what the...claim is and the grounds upon
10 which it rests." *Twombly*, 550 U.S. at 555, 570. The plaintiff must plead "factual content that
11 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
12 alleged." *Iqbal*, 556 U.S. at 678. Courts will not accept "[t]hreadbare recitals of the elements of a
13 cause of action, supported by mere conclusory statements...." *Id.* "All allegations of material fact
14 are taken as true and construed in the light most favorable to the nonmoving party." *Sprewell v.*
15 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (citation omitted).

16 "To state a claim under § 1983 against state officials in their individual capacities, a
17 plaintiff must plead that the officials, acting under color of state law, caused the deprivation of a
18 federal right." *OSU Student Alliance v. Ray*, 699 F.3d 1053, 1061 (9th Cir. 2012). "[A] plaintiff
19 must plead that each government-official defendant, through the official's own individual actions,
20 had violated the Constitution." *Id.* at 1069. A complaint must contain "sufficient allegations of
21 underlying facts to give fair notice and to enable each of the County officers to defend him or
22 herself." *AE ex rel. Hernandez v. County of Tulare*, 666 F.3d 631, 637 (9th Cir. 2012). Where a
23 plaintiff does not know who devised an allegedly unconstitutional policy, the complaint must
24 create a plausible inference that the individual "promulgated, implemented, or in some other way
25 possessed responsibility" for the continued operation of the policy. *See OSU*, 699 F.3d at 1076.

26 Here, Plaintiff's complaint is fatally based on "conclusory allegations and generalities,
27 without any allegation of the specific wrong-doing by each Defendant." *Hydrick v. Hunter*, 669
28 F.3d 937, 942 (9th Cir. 2012). The Complaint's allegations against each individual defendant do

1 no more than recite each individual's job description, and in some cases allege in conclusory
2 fashion that the individual was personally involved in adopting and/or implementing the policy.
3 For example: "Defendant NEAL TYLER is Executive Officer of the Sheriff's Department," and
4 "[u]pon information and belief, he is personally involved in the adoption and/or implementation of
5 the mail policies at issue and is responsible for overseeing, planning, coordinating and evaluating
6 the legality of the mail policies and practices at the Men's Central Jail." The Complaint does not
7 mention any individual thereafter. Without specific allegations of misconduct, the Court cannot
8 accept as plausible that any individual promulgated, implemented, or was responsible for the
9 continued operation of the policy. Mere allegations that an individual oversaw implementation of
10 the policy at issue, without more, is too "bald" and "conclusory" to accept as plausible. *See Iqbal*,
11 556 U.S. at 680-81 (allegations that attorney general was "principal architect" of policy and FBI
12 director was "instrumental in adopting and executing" policy were insufficient). Plaintiff has not
13 adequately pleaded that any individual, through his own actions, violated the Constitution.

14 Plaintiff's alternative argument that the Complaint is at least sufficient as to Sheriff
15 McDonnell in his supervisory capacity fares no better. "A defendant may be held liable as a
16 supervisor under § 1983 if there exists either (1) his or her personal involvement in the
17 constitutional deprivation, or (2) a sufficient causal connection between the supervisor's wrongful
18 conduct and the constitutional violation." *Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir. 2011).
19 "The requisite causal connection can be established...by setting in motion a series of acts by
20 others which the actor knows or reasonably should know would cause others to inflict the
21 constitutional injury." *Redman v. Cnty. of San Diego*, 942 F.2d 1435, 1448 (9th Cir. 1991).

22 Here, the Complaint alleges: "Defendant JIM MCDONNELL is the Los Angeles County
23 Sheriff," and "is responsible for overseeing the management and operations of the jails, and for the
24 hiring, screening, training, retention, supervision, discipline, counseling, and control of the
25 personnel of the Los Angeles County jails who interpret and apply the jails' inmate mail policy.
26 As Sheriff, Defendant MCDONNELL is a final policymaker for Defendant COUNTY OF LOS
27 ANGELES with respect to the operations of all Los Angeles County jails, inclusive of Men's
28 Central Jail, including for policies governing incoming mail for inmates." The Complaint does

1 not allege with specificity that Sheriff McDonnell was personally involved in creating or enforcing
2 the policy or that he “set in motion” acts by his subordinates that he knew or should have known
3 would cause injury. Moreover, the Complaint does not allege with specificity that Sheriff
4 McDonnell participated in, directed, or knew of the violations and failed to prevent them.
5 Accordingly, the Complaint is dismissed as to Sheriff McDonnell and all other individual
6 defendants.

7 California’s Bane Act provides a cause of action for violations of constitutional rights.
8 Cal. Civ. Code § 52.1; *Rivera v. Cnty. of Los Angeles*, 745 F.3d 384, 393 (9th Cir. 2014). There
9 are two elements to a Bane Act claim: “(1) intentional interference or attempted interference with
10 a state or federal constitutional or legal right, and (2) the interference or attempted interference
11 was by threats, intimidation or coercion.” *Allen v. City of Sacramento*, 183 Cal. Rptr. 3d 654, 676
12 (Ct. App. 2015). Where a violation is inherently coercive, some courts hold that a plaintiff is not
13 required to allege threats, intimidation, or coercion apart from the violation. *See, e.g., M.H. v.*
14 *Cnty. of Alameda*, 90 F. Supp. 3d 889, 897-98 (N.D. Cal. 2013) (plaintiff not required to show
15 separate coercion where plaintiff alleged deliberate indifference to medical needs).

16 Here, Plaintiff’s Bane Act claim fails because the Complaint does not plausibly allege that
17 Defendants threatened, intimidated, or coerced Plaintiff. The Complaint’s allegations that
18 Defendants rejected 149 pieces of mail, sometimes with notations such as “UNACCEPTABLE,”
19 and did not give Plaintiff notice or a chance to appeal, are insufficient. The Complaint’s
20 allegations that the rejections “constitute[d] interference by threats, intimidation, and/or coercion”
21 are conclusory and unsupported by the other allegations. Further, the act of rejecting mail is not
22 inherently coercive. Therefore, Plaintiff’s Bane Act claim is dismissed as to the County.

23 **IT IS HEREBY ORDERED** that Defendant’s Motion to Dismiss is GRANTED. (Dkt.
24 No. 44).

25 Dated: November 14, 2017.



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MANUEL L. REAL
UNITED STATES DISTRICT JUDGE