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5 UNITED STATES DISTRICT COURT
6 CENTRAL DISTRICT OF CALIFORNIA
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9 L. GUERRERO,) CASE NO. CV 00-7165 WJR (CTx)
10 Plaintiff,) Honorable William J. Rea
11 vs.) Courtroom 10
12 DARYL GATES, et al.,)
13 Defendants.) ORDER REGARDING MOTION TO
DISMISS
_____)

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15 On August 28, at 10:00 a.m. in Courtroom 10 of the Federal
16 Court of the Central District of California, the Honorable
17 William J. Rea, Judge presiding, Defendant Bernard Parks' Motion
18 to Dismiss came on for hearing before this Court. Stephen
19 Yagman, Katherine Kates, and Mitchell Kamin appeared on behalf of
20 Plaintiff. L. Trevor Grimm and Wendy Shapero appeared on behalf
21 of Parks.

22 **I. Legal Standard**

23 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a
24 party may bring a motion to dismiss a plaintiff's claims if the
25 plaintiff's allegations "fail to state a claim upon which relief
26 can be granted." Fed. R. Civ. P. 12(b)(6). Generally, "[a]
27 complaint should not be dismissed for failure to state a claim
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1 unless it appears beyond doubt that the plaintiff can prove no
2 set of facts in support of his claim which would entitle him to
3 relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Thus,
4 dismissal is proper where the complaint lacks either a cognizable
5 legal theory or sufficient facts to support a cognizable legal
6 theory. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
7 699 (9th Cir. 1990).

8 In reviewing a Rule 12(b)(6) motion, a court must construe
9 all allegations contained in the complaint in the light most
10 favorable to the plaintiff, and must accept as true all material
11 allegations in the complaint, as well as any reasonable
12 inferences to be drawn from them. See Hospital Bldg. Co. v.
13 Trustees of the Rex Hosp., 425 U.S. 738 (1976). Thus, no matter
14 how improbable the alleged facts are, the court must accept them
15 as true for the purposes of the motion. See Nietzke v. Williams,
16 490 U.S. 319, 326-27 (1989).

17 A court need not, however, accept as true unreasonable
18 inferences or unwarranted deductions of fact. See Western Mining
19 Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). A court does
20 not have free reign simply to use its imagination. See
21 Associated Gen. Contractors v. California State Council, 459 U.S.
22 519, 526 (1983). Similarly, while a claimant generally "is not
23 required to plead detailed evidentiary matters," Washington v.
24 Baenziger, 673 F. Supp. 1478, 1482 (N.D. Cal. 1987), the court
25 need not accept as true conclusory allegations or legal
26 characterizations. See Sherman v. Yakahi, 549 F.2d 1287, 1290

1 (9th Cir. 1977).

2 Finally, in dismissing a complaint for failure to state a
3 claim, a district court should grant leave to amend even if the
4 plaintiff does not request it, unless the court determines that
5 the pleading could not possibly be cured by the allegation of
6 other facts. See Doe v. United States, 58 F.3d 494, 497 (9th
7 Cir. 1995). Granting leave to amend furthers the policy of
8 facilitating decisions on the merits, rather than on the
9 pleadings or technicalities. See Lopez v. Smith, 2000 WL 144385,
10 at *4 (9th Cir. Feb. 10, 2000).

11 **II. Analysis**

12 **A. Application of Heck v. Humphrey**

13 First, Parks argues that Guerrero's 42 U.S.C. § 1983 claims
14 are barred by Heck v. Humphrey. In Heck v. Humphrey, the Supreme
15 Court held that a § 1983 action that would call into question the
16 lawfulness of a plaintiff's conviction is barred until the
17 conviction is "reversed on direct appeal, expunged by executive
18 order, declared invalid by a state tribunal authorized to make
19 such a determination, or called into question by a federal
20 court's issuance of a writ of habeas corpus." 512 U.S. 477, 487
21 (1994).

22 The Court finds, however, that Heck v. Humphrey does not bar
23 the § 1983 claims of a plaintiff who is no longer in custody. In
24 Spencer v. Kemna, five justices expressed the view that a § 1983
25 plaintiff who is no longer in custody "may bring a § 1983 action
26 establishing the unconstitutionality of a conviction . . .

1 without being bound to satisfy a favorable-termination
2 requirement that it would be impossible as a matter of law for
3 him to satisfy." 523 U.S. 1, 21 (1998) (Souter, J., concurring).
4 The majority of courts since Spencer have followed this
5 reasoning. See Haddad v. California, 64 F. Supp. 2d 930, 937-38
6 (C.D. Cal. 1999).

7 Here, Guerrero was released from custody in August 1999.
8 Although Parks argues that Guerrero is in constructive custody
9 because he is subject to terms of parole or probation, this fact
10 does not appear on the face of the Complaint. Accordingly, the
11 Court finds that Guerrero's § 1983 claims are not barred under
12 the doctrine of Heck v. Humphrey.

13 B. Statute of Limitations

14 Second, Parks argues that Guerrero's § 1983 claims are
15 barred by the statute of limitations. State law governs the
16 length of the limitations period for a § 1983 claim. The
17 limitations period for a § 1983 claim in California is one year.
18 See Del Percio v. Thornsley, 877 F.2d 785, 786 (9th Cir. 1989).

19 Although state law governs the length of the limitations
20 period for a § 1983 claim, federal law determines when the claim
21 accrues. See TwoRivers v. Lewis, 174 F.3d 987, 991 (9th Cir.
22 1999). Under federal law, a claim generally accrues when the
23 plaintiff knows or has reason to know of the injury that is the
24 basis for the action. See id.

25 Heck v. Humphrey creates an exception to the general rule
26 regarding the accrual of a federal claim. Heck v. Humphrey held

1 that where a judgment in favor of a plaintiff on a § 1983 claim
2 would necessarily imply the invalidity of his conviction, the §
3 1983 claim does not accrue until the conviction has been
4 invalidated. See 512 U.S. at 487. Although a majority of courts
5 since Spencer v. Kemna have held that Heck v. Humphrey does not
6 bar a § 1983 claim by a plaintiff no longer in custody, see
7 Haddad, 64 F. Supp. 2d 937-38, the cases have left open the
8 question of when a § 1983 claim accrues where judgment in favor
9 of the plaintiff on the claim would necessarily imply the
10 invalidity of his conviction but the plaintiff is no longer in
11 custody. It is apparent, however, that the earliest date such a
12 claim could accrue is the date of the plaintiff's release from
13 custody.

14 Here, Guerrero asserts § 1983 claims alleging that LAPD
15 Rampart CRASH officers violated his Fourth and Fourteenth
16 Amendment rights by unlawfully detaining him, illegally searching
17 him, planting narcotics on him, and illegally arresting him, and
18 as a result, he was falsely charged with a narcotics offense and
19 unlawfully incarcerated. A judgment in favor of Guerrero on
20 these claims would necessarily imply the invalidity of his
21 conviction. Consequently, these claims did not accrue until
22 Guerrero was released from custody. Guerrero was released from
23 custody in August 1999 and filed this action less than one year
24 later, on June 30, 2000. Accordingly, the Court finds that these
25 claims are not barred by the statute of limitations.

26 In addition, Guerrero asserts a § 1983 claim alleging that
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1 LAPD Rampart CRASH officers violated his Fourth and Fourteenth
2 Amendment rights by using excessive force to effectuate his
3 arrest. It appears that a judgment in favor of Guerrero on this
4 claim would not necessarily imply the invalidity of his
5 conviction. See Smithart v. Towery, 79 F.3d 951, 952-53 (9th
6 Cir. 1996) (finding that successful § 1983 claim based on
7 allegation of excessive force did not necessarily imply
8 invalidity of plaintiff's conviction). Ordinarily this claim
9 would accrue on November 14, 1997, when LAPD Rampart CRASH
10 officers allegedly used excessive force to effectuate his arrest.

11 Under California law, however, prisoners serving less than a
12 life sentence may toll claims for up to two years. See Cal.
13 Code. Civ. Proc. § 352.1(a) (West 1982 and Supp. 2000). Because
14 Guerrero was continuously in custody from November 1997 to August
15 1999, his excessive force claim was tolled until August 1999.
16 Guerrero filed this action less than one year later, on June 30,
17 2000. Accordingly, the Court finds that this claim is not barred
18 by the statute of limitations.

19 C. Prospective Equitable Relief

20 Third, Parks argues that Guerrero lacks standing to seek
21 prospective equitable relief. The case or controversy standing
22 requirement serves to limit federal jurisdiction to those cases
23 in which an adversarial setting is guaranteed by the parties'
24 personal stake in the outcome of the litigation. See Warth v.
25 Seldin, 422 U.S. 490, 498 (1975). The irreducible minimum
26 demanded of a proper plaintiff requires that the plaintiff show

1 that he has personally suffered some actual or threatened injury
2 as a result of the putatively illegal conduct of the defendant,
3 that can be fairly traced to the defendant's challenged conduct,
4 and which is likely to be redressed by a favorable decision. See
5 Valley Forge Christian College v. Americans United for Separation
6 of Church and State, Inc., 454 U.S. 464, 472 (1982).

7 In cases for injunctive relief, the plaintiff must show that
8 he is likely to suffer a similar injury in the future. See Los
9 Angeles v. Lyons, 461 U.S. 95, 105 (1983). Injunctive relief is
10 unavailable where the plaintiff's claim of future injury is
11 merely speculative. See id. Past exposure to illegal conduct
12 does not in itself show a present case or controversy regarding
13 injunctive relief if unaccompanied by any continuing, present
14 adverse effects. See O'Shea v. Littleton, 414 U.S. 488, 495-96
15 (1974). Courts have repeatedly held that this requirement is
16 satisfied if the plaintiff alleges a persistent pattern of police
17 misconduct from which a threat of future injury can be inferred.
18 See LaDuke v. Nelson, 762 F.2d 1318, 1324 (9th Cir. 1985).

19 Here, Guerrero alleges that he was the victim of repeated
20 instances of misconduct at the hands of LAPD Rampart CRASH
21 officers. Guerrero alleges that this misconduct is part of a
22 larger pervasive pattern of misconduct by LAPD Rampart CRASH
23 officers, which is "authorized, ordered, condoned, tolerated,
24 acquiesced in, approved of, and ratified by defendants." First
25 Am. Compl., at 23. Guerrero alleges that the alleged misconduct
26 is continuing, that he is likely to be set up again by

1 Defendants, and that there is a real and immediate threat of
2 serious injury or death. See id. at 24. Assuming the truth of
3 Guerrero's allegations, a future threat can be inferred from the
4 alleged pattern of police misconduct. Accordingly, the Court
5 finds that Guerrero has standing to pursue his claim for
6 injunctive relief.

7 D. RICO Claims

8 Finally, Parks argues that Guerrero lacks standing to pursue
9 claims asserted under the Racketeering Influenced and Corrupt
10 Organizations Act ("RICO"), 18 U.S.C. § 1961 to § 1968. RICO
11 takes aim at "racketeering activity," which includes acts
12 chargeable under state criminal laws and punishable by
13 imprisonment for more than one year, such as murder, kidnaping,
14 robbery, bribery, extortion, or dealing in narcotics. See 19
15 U.S.C. § 1961(1)(A) (West 1984 and Supp. 2000). RICO makes it
16 unlawful for "any person" to: (1) use money derived from a
17 pattern of racketeering activity to acquire or maintain control
18 of an enterprise, (2) acquire or maintain control of an
19 enterprise through a pattern of racketeering activity, (3)
20 conduct an enterprise through a pattern of racketeering activity,
21 or (4) conspire to do so. See id. § 1962(a)-(d).

22 In addition to imposing criminal penalties, RICO authorizes
23 a private suit by "any person injured in his business or property
24 by reason of a violation of § 1962." Id. § 1964(c). Thus, if a
25 defendant engages in a pattern of racketeering activity in a
26 manner forbidden by these provisions, and the racketeering

1 activities injure a plaintiff in his business or property, the
2 plaintiff has a claim under § 1964(c). See Sedima, S.P.R.L. v.
3 Imrex Co., Inc., 473 U.S. 479, 495 (1985).

4 Guerrero relies on § 1962(b), § 1962(c), and § 1962(d). A
5 violation of § 1962(b) requires: (1) acquisition or maintenance
6 of (2) an interest in or control of (3) any enterprise (3)
7 through a pattern (4) of racketeering activity. See Medallion TV
8 Enters., Inc. v. SelectTV of Cal., Inc., 627 F. Supp. 1290, 1292
9 (C.D. Cal. 1986). A violation of § 1962(c) requires: (1)
10 participation (2) in the affairs of an enterprise (3) through a
11 pattern (4) of racketeering activity. See id. A violation of §
12 1962(d) requires either: (1) an agreement, the objective of which
13 is a substantive violation of RICO, and (2) awareness of the
14 essential nature and scope of the enterprise and intent to
15 participate in it. See Howard v. America Online, Inc., 208 F.3d
16 741, 761 (9th Cir. 2000). The plaintiff must allege each of
17 these elements to state a claim.

18 In addition, a plaintiff only has standing if, and can only
19 recover to the extent that, he has been injured in his business
20 or property by the conduct constituting the violation. See
21 Sedima, 473 U.S. at 496. The RICO statute requires no more than
22 this. See id. at 497. Where the plaintiff alleges each element
23 of the violation, the compensable injury necessarily is the harm
24 proximately caused by the predicate acts that constitute the
25 pattern of racketeering activity, for the essence of the
26 violation is the commission of those acts in connection with the

1 conduct of an enterprise. See id.

2 Here, Parks does not dispute that the necessary RICO
3 elements are met. Rather, Parks argues that Guerrero lacks
4 standing to pursue his RICO claims. Guerrero alleges that
5 Defendants maintained control and conducted the affairs of the
6 LAPD Rampart CRASH unit through a pattern of racketeering
7 activities, including attempted murder, extortion, narcotics
8 dealing, and witness tampering, in violation of 18 U.S.C. §
9 1962(b) and § 1962(c). See First Am. Compl., at ¶ 58-60. In
10 addition, Guerrero alleges that Defendants conspired to maintain
11 control and conduct the affairs of the LAPD Rampart CRASH unit
12 through the same means, in violation of § 1962(d). See id. ¶ 67.

13 Guerrero alleges that, as a result, he was injured in his
14 business and property in the form of lost employment, employment
15 opportunities, wages, and other compensation. Loss of
16 employment, denial of employment benefits, loss of business
17 opportunities, and damage to professional reputation have all
18 been held to constitute cognizable injuries to business or
19 property for purposes of RICO, so long as the injuries were
20 proximately caused by a pattern of racketeering activity. See
21 Khurana v. Innovative Health Care Sys., Inc., 130 F.3d 143, 150-
22 52 (5th Cir. 1997); Sadighi v. Daghighfekr, 36 F.Supp. 2d 279,
23 292 (D.S.C. 1999); McC Campbell v. KPMG Peat Marwick, 1997 WL
24 311521 at *2 (N.D. Tex. May 30, 1997).

25 Parks argues that Guerrero's alleged injuries constitute
26 nothing more than pecuniary losses stemming from personal
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1 injuries and, as such, they are not cognizable injuries under the
2 RICO statutes. See Oscar v. University Students Co-Operative
3 Ass'n, 965 F.2d 783, 785 (9th Cir. 1992). A number of courts,
4 however, have accepted or shown a disposition in favor of
5 allowing RICO claims for the pecuniary losses associated with
6 personal injuries caused by racketeering. See National Asbestos
7 Workers Med. Fund v. Philip Morris, Inc., 74 F.Supp.2d 221, 233
8 (E.D.N.Y. 1999); see also Libertad v. Welch, 53 F.3d 428, 437 n.
9 4 (1st Cir. 1995) ("Plaintiffs like Libertad and Emancipacion
10 could have standing to sue under RICO, if they were to submit
11 sufficient evidence of injury to business or property such as
12 lost wages or travel expenses, actual physical harm, or specific
13 property damage sustained as a result of a RICO defendant's
14 actions."); Jerry Kubecka, Inc. v. Avellino, 898 F.Supp. 963, 968
15 (E.D.N.Y. 1995) ("If [murder victims] had been merely disabled by
16 the attempt on their lives but survived, presumably they would
17 have had a RICO claim for lost earnings from their business
18 activities because they had been injured in their business or
19 property."); Von Bulow v. Von Bulow, 634 F.Supp. 1284, 1309
20 (S.D.N.Y. 1986) ("The cost to [comatose murder target] of her
21 committee and her inability to enjoy her personal and real
22 property may well be compensable monetary injuries under RICO.");
23 Meyer v. First Nat'l Bank & Trust Co., 698 F.Supp. 798, 803
24 (D.N.D. 1987) ("[t]he direct damages resulting from the predicate
25 acts would also be compensable (i.e., recovery for the cost of a
26 burned building, or personal injury resulting from threats),

1 just as damages for 'infiltration injury' to a legitimate
2 business enterprise would be compensable."); Hunt v. Weatherbee,
3 626 F.Supp. 1097, 1100-1101 (D. Mass.1986) (allowing sexual
4 discrimination and harassment victim to seek lost wages under
5 RICO). Accordingly, the Court finds that Guerrero has standing
6 to pursue his RICO claims.¹ See National Org. for Women, Inc. v.
7 Scheidler, 510 U.S. 249, 256 (1994) (holding that allegation that
8 conspiracy "injured the business and/or property interests" of
9 the petitioners was sufficient to confer standing at the pleading
10 stage).

11 Based on the foregoing, the Court hereby denies Parks'
12 Motion to Dismiss.

13 IT IS SO ORDERED.

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16 Dated: August _____, 2000

17 WILLIAM J. REA
United States District Judge

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23 _____
24 ¹ The Court emphasizes that Guerrero may recover only to the
25 extent that he has been injured in his business or property by the
26 conduct constituting the RICO violation. See Sedima, 473 U.S. at
27 496. Thus, Guerrero must prove concrete financial losses to
28 recover on his RICO claims, and any damages will be limited to the
extent of the tangible financial injury, e.g., lost wages, etc.
See id.; Oscar, 965 F.2d at 785.