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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NIMA VAEZI; AGUSTIN AGUILERA;
JAMES HOREJS,

Plaintiffs-Appellants,

v.

WARREN STANLEY; DANIEL MINOR;
CHRISTOPHER MARGARIS; MELISSA
HAMMOND; MARTIN GELLER,

Defendants-Appellees,

and

STATE OF CALIFORNIA;
CALIFORNIA HIGHWAY PATROL,

Defendants.

No. 21-56273

D.C. No.
2:21-cv-03027-JFW-E

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted December 6, 2022
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: BEA, IKUTA, and CHRISTEN, Circuit Judges.

Plaintiffs Nima Vaezi, Agustin Aguilera, and James Horejs, former California Highway Patrol (CHP) officers assigned to the East Los Angeles Area (ELA) station, appeal a district court order dismissing their claim for judicial deception against CHP investigator Sergeant Martin Geller. Because the parties are familiar with the facts, we do not restate them here. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate the district court's order and remand with an instruction to grant plaintiffs leave to amend their complaint.

1. The district court concluded there were two independently sufficient reasons for dismissal. First, relying on the Central District of California's Local Rule 7-2, the court dismissed the operative complaint because plaintiffs failed to lodge a proposed statement of decision as required by the court's standing order. The district court's standing order cautioned that failure to comply with the order would be a ground for dismissal, but the court did not enforce this rule when dismissing an earlier iteration of plaintiffs' complaint. A district court has discretion to dismiss a complaint for failure to follow the court's local rules, *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995), but under the circumstances here, we conclude the court's reliance on the local rule was an abuse of discretion.

We weigh the district court's dismissal against the five factors set forth in *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986). *See Ghazali*, 46 F.3d at 53–54. The district court did not explicitly analyze these factors. Assessing them independently, we conclude the public's interest in expeditious litigation and the district court's interest in managing its docket may weigh in favor of dismissal. *See Henderson*, 779 F.2d at 1423. But the remaining *Henderson* factors weigh heavily against dismissal: (1) neither Sergeant Geller nor the other defendants were prejudiced by plaintiffs' failure to submit a proposed statement of decision because defendants' motion to dismiss was fully briefed, *id.*; (2) the public policy in favor of deciding cases on their merits is especially weighty here because this case raises allegations of public corruption or misconduct, and though the complaint is opaque, we conclude amendment is not futile, *id.*; *cf. Dobronski v. FCC*, 17 F.3d 275, 278 (9th Cir. 1994); and (3) the district court had less drastic sanctions available, *Henderson*, 779 F.2d at 1423. Because the district court addressed the merits, and the five *Henderson* factors weigh so strongly in favor of doing so, the district court's reliance on the local rule was an abuse of discretion. *See United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en banc).

2. We review de novo the district court’s dismissal for failure to state a claim and the district court’s decision to deny leave to amend for futility. *See Kroessler v. CVS Health Corp.*, 977 F.3d 803, 807 (9th Cir. 2020). To state a claim for judicial deception under 42 U.S.C. § 1983, a plaintiff must allege that a defendant deliberately or recklessly made false statements or omissions in the affidavit submitted in support of a search warrant and that the statements or omissions were material to the magistrate judge’s probable cause finding. *Chism v. Washington*, 661 F.3d 380, 386 (9th Cir. 2011). A statement or omission is “material if ‘the affidavit, once corrected and supplemented,’ would not have provided a magistrate judge with a substantial basis for finding probable cause.” *Id.* at 389 (quoting *United States v. Stanert*, 762 F.2d 775, 782 (9th Cir.), *amended on denial of reh’g*, 769 F.2d 1410 (9th Cir. 1985)).

Plaintiffs argue that the complaint alleged that Sergeant Geller omitted material information that would have shown plaintiffs lacked specific intent to commit theft under California law. Sergeant Geller argues that plaintiffs’ specific intent argument was raised for the first time on appeal, but plaintiffs’ opposition to the motion to dismiss argued that they lacked criminal intent to commit theft under California law. *See People v. Gonzales*, 392 P.3d 437, 442 (Cal. 2017) (explaining that theft by false pretenses is encompassed by the statutory offense of “theft”);

People v. Ashley, 267 P.2d 271, 282 (Cal. 1954) (holding that theft by false pretenses is a specific intent crime). Plaintiffs were not required to make explicit the link between the policy authorizing their actions, and why that policy was material to probable cause because, closely read, the operative complaint “sufficiently alleged facts in support of a reasonable inference that [Geller] committed judicial deception.” *Benavidez v. County of San Diego*, 993 F.3d 1134, 1146 (9th Cir. 2021).

For the most part, the complaint implies that plaintiffs relied on only an informal custom or practice when claiming overtime that they did not work. But the complaint also alleged that Sergeant Geller made material omissions in his affidavit by knowingly withholding information about an official Standard Operating Procedure (SOP) at ELA station, and that plaintiffs’ supervisors authorized their billing practices. Specifically, at pages 7–8 and footnote 1, the complaint clarified that the SOP was an official written policy adopted by plaintiffs’ supervisors, not merely a custom or practice. Plaintiffs contend that had Sergeant Geller included the SOP in the materials submitted to the magistrate judge, the SOP would have demonstrated that plaintiffs lacked the specific intent to commit theft as required by California law because theft by false pretenses requires proof that “any misrepresentations of fact . . . were made knowingly *and with*

intent to deceive.” Ashley, 267 P.2d at 282 (emphasis added); Judicial Council of California Criminal Jury Instructions (CALCRIM), No. 1804 (explaining the State must prove that defendant “intended to deceive” the victim). We have held that while “an officer need not have probable cause for every element of the offense,” “when specific intent is a required element . . . the arresting officer must have probable cause for that element in order to reasonably believe that a crime has occurred.” *Gasho v. United States*, 39 F.3d 1420, 1428 (9th Cir. 1994). If plaintiffs’ practice of claiming compensation for hours they were “on call,” but not working, was authorized by CHP’s official SOP and the relevant supervisors, it is plausible this information would have negated the magistrate’s substantial basis for finding probable cause. However, claims for judicial deception must comport with the pleading standards found in Rule 9(b) of the Federal Rules of Civil Procedure. *See Benavidez*, 993 F.3d at 1147–49. We conclude that the allegations in the operative complaint were insufficiently specific regarding the alleged shortcomings of Sergeant Geller’s affidavits, and the extent to which the SOP was an officially adopted policy rather than a customary practice. *See, e.g., Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003). Without such particular allegations, plaintiffs’ complaint failed to state a claim, but the district court erroneously concluded that any amendment would be futile. *See Kroessler*, 977

F.3d at 815. Accordingly, we vacate the dismissal order with an instruction to provide plaintiffs one final opportunity to plead their judicial deception claim.

VACATED AND REMANDED.