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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND M. DOUGLAS,
Plaintiff,
v.
COUNTY OF SACRAMENTO, et al.,
Defendants.

No. 2:16-cv-0415 MCE AC (PS)

FINDINGS AND RECOMMENDATIONS

Plaintiff is proceeding in this action pro se and in forma pauperis. This proceeding was referred to the undersigned by E.D. Cal. R. (“Local Rule”) 302(c)(21).¹ On May 4, 2016, the court screened plaintiff’s original complaint, and determined that plaintiff could proceed with his Section 1983 (42 U.S.C. § 1983) claims against defendant Sacramento County Sheriff’s Deputy Huffman, Badge # 458. ECF No. 6. The court also determined that plaintiff failed to state claims against defendants Sacramento County Sheriff’s Deputy Peter Cress - Badge # 578, the County of Sacramento, and the Sacramento County Sheriff’s Department. Id.

Plaintiff was advised that he could proceed against defendant Huffman alone, or he could amend his complaint to attempt to state claims against the remaining defendants. Id. Plaintiff

¹ This case is related to Douglas v. City of Sacramento, 2:16-cv-0375 MCE AC (E.D. Cal.). ECF No. 5.

1 amended his complaint. See ECF No. 11 (Second Amended Complaint).²

2 That Second Amended Complaint (“Complaint”) will therefore be screened. As discussed
3 below, the Complaint does not cure the deficiencies of the original complaint.

4 I. THE COMPLAINT

5 The following description assumes, for purposes of this screening only, the truth of the
6 allegations of the Complaint. On March 23, 2015 at or around 10:30 p.m., non-defendant Police
7 Officer Rath, Badge # 610, and defendant Sacramento County Sheriff’s Deputy Huffman, Badge
8 # 458, used excessive force while arresting plaintiff, which force included breaking plaintiff’s
9 arm.³ Complaint (ECF No. 11) ¶¶ 6-12. Huffman searched plaintiff’s person and belongings. Id.
10 ¶¶ 11, 84-85. The complaint alleges that there was no reasonable suspicion nor probable cause
11 for the search or the arrest. Id. ¶¶ 74, 84-85.⁴ According to the complaint, defendant Sacramento
12 County Sheriff’s Deputy Peter Cress, Badge # 578, negotiated a \$2,000 settlement with plaintiff,
13 for all claims arising out of this incident. Complaint ¶¶ 4, 26-28, 37, 80-81. However, plaintiff
14 alleges that the settlement was made “under duress and undue influence,” and is “void.”
15 Complaint ¶¶ 4, 80, 81.

16 The complaint again names the County of Sacramento and the Sacramento County
17 Sheriff’s Department as defendants, but once again makes no allegations against them. The
18 complaint names no other defendants.

19 II. SCREENING

20 The federal IFP statute requires federal courts to dismiss a case if the action is legally
21 “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks
22 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).

24 ² Plaintiff filed his First Amended Complaint on May 23, 2016. ECF No. 9. He filed his Second
25 Amended Complaint on May 25, 2016. ECF No. 11. The court will treat the Second Amended
Complaint as the operative complaint.

26 ³ Plaintiff sued Rath in the related lawsuit. See Douglas v. City of Sacramento, 2:16-cv-0375
MCE AC, ECF No. 1 (E.D. Cal. February 22, 2016) (complaint).

27 ⁴ The Complaint alleges that the search was unlawful, and that plaintiff’s privacy was “uselessly
28 invaded” by the search. Complaint ¶ 84. The court interprets this to mean that the search was
done without reasonable suspicion or probable cause.

1 Plaintiff must assist the court in making this determination by drafting his complaint so that it
2 contains a “short and plain statement” of the basis for federal jurisdiction (that is, the reason the
3 case is filed in this court, rather than in a state court), as well as a short and plain statement
4 showing that plaintiffs are entitled to relief (that is, who harmed the plaintiffs, and in what way).
5 Plaintiff’s claims must be set forth simply, concisely and directly. See “Rule 8” of the Federal
6 Rules of Civil Procedure (Fed. R. Civ. P. 8). The Federal Rules of Civil Procedure are available
7 online at [www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure)
8 [procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure). Forms are also available to help pro se plaintiffs organize their complaint in the
9 proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor, Sacramento, CA
10 95814, or online at www.uscourts.gov/forms/pro-se-forms.

11 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
12 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the
13 court will (1) accept as true all of the factual allegations contained in the complaint, unless they
14 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the
15 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327;
16 Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at
17 Pasadena, 592 F.3d 954, 960 (9th Cir. 2010); Hebbe v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010).

18 However, the court need not accept as true, legal conclusions cast in the form of factual
19 allegations, or allegations that contradict matters properly subject to judicial notice. See Western
20 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State Warriors,
21 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001).

22 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
23 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may
24 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support
25 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th
26 Cir. 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an
27 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See
28 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

1 III. ANALYSIS

2 The Complaint states a cognizable Section 1983 (42 U.S.C. § 1983) claim for relief
3 against defendant Huffman for the use of excessive force, unlawful arrest and unlawful search
4 and seizure, in violation of the Fourth Amendment to the U.S. Constitution. If the allegations of
5 the complaint are proven, plaintiff has a reasonable opportunity to prevail on the merits of this
6 action. See Green v. City & Cty. of San Francisco, 751 F.3d 1039 (9th Cir. 2014) (plaintiff
7 entitled to go to trial on Section 1983 claims for unlawful seizure, unlawful arrest and excessive
8 force).

9 However, as discussed more fully in the court’s prior order (ECF No. 6), the complaint
10 fails to state a cognizable claim against Cress, the County of Sacramento, or the Sacramento
11 County Sheriff’s Department. Cress is alleged only to have negotiated a settlement of plaintiff’s
12 claims related to the alleged conduct of Huffman and non-defendant Rath. No violation of any
13 federal right is alleged to be involved in that process, and none is suggested by the facts. As for
14 the county defendants, they cannot be held liable under Section 1983 based solely upon the
15 conduct of Deputy Huffman, as that would be “vicarious liability.” See Connick v. Thompson,
16 563 U.S. 51, 60 (2011)) (municipal defendants “are not vicariously liable under § 1983 for their
17 employees’ actions”). Instead, these defendants can be held liable only for the harm caused by
18 their own actions and policies. Id. (municipal defendants “are responsible only for their own
19 illegal acts”) (internal quotation marks omitted); Monell v. Dep’t of Soc. Servs. of City of New
20 York, 436 U.S. 658 (1978).

21 Plaintiff has been given the opportunity to cure the defects in the complaint regarding
22 those defendants, but he has completely failed to do so. Accordingly, the undersigned believes it
23 would be futile to permit plaintiff another opportunity to amend his complaint.⁵

24 _____
25 ⁵ As in his original complaint, plaintiff does use the words “custom” and “ratify” regarding the
26 conduct of the County Sheriff’s office. See Complaint ¶¶ 59, 60, 88. By these terms, plaintiff
27 appears to be referring to the manner in which the County addressed the complaint he filed with
28 the County Sheriff’s Internal Affairs Division. However, plaintiff simply repeats his allegations
that Internal Affairs conducted an investigation, and quickly settled with him for \$2,000, after
initially offering \$500. There is once again no allegation that, for example, Internal Affairs had a
(continued...)

1 IV. CONCLUSION

2 For the reasons stated above, IT IS HEREBY RECOMMENDED that:

3 1. All Section 1983 claims against defendants Cress, the County of Sacramento, and the
4 County of Sacramento County Sheriff’s Department should be DISMISSED with prejudice, and
5 all state claims against those defendants should be dismissed without prejudice to their renewal in
6 an appropriate state forum;

7 2. Service is appropriate for the following defendant: Sacramento County Sheriff’s
8 Deputy Huffman, Badge # 458. Accordingly, if the district judge adopts these recommendations,
9 the following service instructions should be issued to effect service upon that defendant.

10 a. Plaintiff is directed to supply the U.S. Marshal, within 30 days from the date of
11 the district judge’s order, all information needed by the Marshal to effect service of process
12 (listed below).⁶ Within 10 days of having supplied this information, **plaintiff shall file a**
13 **statement with the court that said documents have been submitted to the United States**
14 **Marshal** (see attachment). The required documents shall be submitted directly to the United
15 States Marshal either by personal delivery or by mail to: United States Marshals Service, 501 “T”
16 Street, Suite 5600, Sacramento, CA 95814 (tel. 916-930-2030).⁷ The court anticipates that, to

17
18 practice of simply offering a pay-off to a homeless complainant (large in the eyes of an
19 impoverished complainant, small in the eyes of the County), and then declining to investigate,
20 thus allowing the alleged harassment to continue unabated. If alleged, such conduct could
21 conceivably be evidence of ratification. See Fuller v. City of Oakland, Cal., 47 F.3d 1522, 1535
22 (9th Cir. 1995) (failure to investigate in an unbiased manner could be evidence of a Section 1983
23 violation). To the contrary, plaintiff alleges that he was told that the investigation would continue
24 even after the settlement. Complaint ¶ 27. Plaintiff’s issue seems to be that he was compensated
25 so quickly even though the investigation was not completed, and that no further compensation
26 would come to him once the investigation was over. See Complaint ¶ 29 (“Upon the plaintiff’s
27 confusion, did he inquire as to why he was compensated so quickly given the investigation not
28 being complete. In response to the plaintiff, did Sgt. /Lt. Donelli state that the \$2,000.00 dollar
agreement was a ‘good deed’ and also did he state that he did not know if there would be further
compensation thereafter the investigation.”).

⁶ Alternatively, if plaintiff no longer wishes to pursue this action, plaintiff may file a notice of
voluntary dismissal without prejudice pursuant to Rule 41 of the Federal Rules of Civil
Procedure.

⁷ The court has already ordered the Clerk of the Court to supply plaintiff with these materials.
See ECF No. 6 at 5 ¶ IV(3).

1 effect service, the U.S. Marshal will require, for each defendant in paragraph 2 above, at least:

2 (1) One completed summons;

3 (2) One completed USM-285 form;

4 (3) One copy of the endorsed filed complaint, with an extra copy for the
5 United States Marshal;

6 (4) One copy of the form to consent or decline to consent to magistrate
7 judge jurisdiction; and

8 (5) One copy of this order.

9 b. The United States Marshal is directed to serve process promptly on each
10 defendant identified in paragraph 2 above, without prepayment of costs.


11 c. In the event the U.S. Marshal is unable, for any reason whatsoever, to effect
12 service within 90 days from the date of this order, the Marshal is directed to report that fact, and
13 the reasons for it, to the undersigned.

14 d. The Clerk of the Court is directed to serve a copy of this order on the U.S.
15 Marshal, 501 "I" Street, Suite 5600, Sacramento, CA 95814 (tel. 916-930-2030).

16 3. Failure by plaintiff to comply with this order may result in a recommendation that this
17 action be dismissed.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
20 after being served with these findings and recommendations, plaintiff may file written objections
21 with the court. Such document should be captioned "Objections to Magistrate Judge's Findings
22 and Recommendations." Local Rule 304(d). Plaintiff is advised that failure to file objections
23 within the specified time may waive the right to appeal the District Court's order. *Martinez v.*
24 *Ylst*, 951 F.2d 1153 (9th Cir. 1991).

25 DATED: June 7, 2016

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27 ALLISON CLAIRE
28 UNITED STATES MAGISTRATE JUDGE

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No. 2:16-cv-0415 MCE AC (PS)

NOTICE OF SUBMISSION

Plaintiff has submitted the following documents to the U.S. Marshal, in compliance with the court's order filed _____:

- ___ completed summons form(s)
- ___ completed USM-285 form (s)
- ___ copy(ies) of the complaint
- ___ completed form(s) to consent or decline to consent to magistrate judge jurisdiction

Date

Plaintiff's Signature