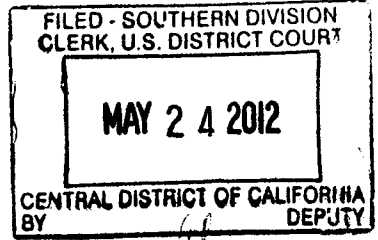


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
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DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ANTHONY FRIDAY UDOM,)
)
Plaintiff,)
)
v.)
)
LAPD, et al.,)
Defendants.)
_____)

Case No. CV 12-3773-RGK (MLG)
MEMORANDUM AND ORDER DISMISSING
COMPLAINT WITH LEAVE TO AMEND

I. Facts

Anthony Friday Udom is currently in the custody of the Department of Homeland Security awaiting removal proceedings. He filed this pro se civil rights complaint, pursuant to 42 U.S.C. § 1983, on May 18, 2012. The complaint alleges a hodgepodge of misconduct by various entities including the Los Angeles Police Department, the State of California, the FBI, the City of Los Angeles, various state prisons, Assistant District Attorney Paul Minnetian and an Officer Hernandez. Included in the allegations are claims for violation of the ADA, unreasonable force, breach of a plea agreement, cruel and unusual punishment, violation of the right to free speech, libel and slander, false arrest and imprisonment, robbery, and infliction of emotional distress. Petitioner notes

1 that his claims are barred by the applicable statute of limitations,
2 but that the untimeliness should be excused due to his mental
3 illness.

4 Because Plaintiff fails to state a cause of action upon which
5 relief may be granted against any defendant other than Officer
6 Hernandez for excessive force, the complaint will be dismissed
7 without leave to amend with respect to the state entities and those
8 individuals entitled to absolute immunity and with leave to amend as
9 to the remaining defendants.

10

11 **II. Discussion and Analysis**

12 **A. Duty to Screen**

13 The Court has screened the complaint prior to ordering service
14 in order to determine whether the action is frivolous or malicious,
15 fails to state a claim upon which relief could be granted, or seeks
16 monetary relief against a defendant who is immune from such relief.
17 28 U.S.C. § 1915(e)(2). The Court's screening of the complaint under
18 the foregoing statute is governed by the following standards. A
19 complaint may be dismissed as a matter of law for failure to state
20 a claim for two reasons: (1) lack of a cognizable legal theory; or
21 (2) insufficient facts under a cognizable legal theory. *Balistreri*
22 *v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Since
23 Plaintiff is appearing pro se, the Court must construe the
24 allegations of the Complaint liberally and must afford Plaintiff the
25 benefit of any doubt. See *Karim-Panahi v. Los Angeles Police Dep't*,
26 839 F.2d 621, 623 (9th Cir. 1988).

27 Moreover, in determining whether a complaint states a claim on
28 which relief may be granted, allegations of material fact are taken

1 as true and construed in the light most favorable to the Plaintiff.
2 *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However,
3 "[t]hreadbare recitals of the elements of a cause of action,
4 supported by mere conclusory statements, do not suffice." *Ashcroft*
5 *v. Iqbal*, --- U.S. ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)
6 citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
7 Plaintiff is required to present factual allegations sufficient to
8 state a plausible claim for relief. *Iqbal*, 129 S.Ct. at 1949-50.

9 **B. Plaintiff Has Failed To State A Claim Upon Which Relief May**
10 **Be Granted with Respect to the State of California and the**
11 **Various State Prisons**

12 The Eleventh Amendment bars suits against a state or its
13 instrumentalities by citizens of another state. U.S. Const. Amend.
14 XI.¹ While not explicitly set forth in the text of the amendment, the
15 Supreme Court has held that citizens are barred from bringing suit
16 against their own state as well. See *Hans v. Louisiana*, 134 U.S. 1,
17 21 (1890). Absent a waiver of Eleventh Amendment immunity, a state
18 may not be sued in federal court. *College Savings Bank v. Florida*
19 *Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999);
20 see also *Quillin v. Oregon*, 127 F.3d 1135, 1138 (9th Cir. 1997) (per
21 curiam). The State of California must therefore be dismissed as a
22 defendant in this action.

23 The state prisons must also be dismissed as defendants because
24 they are state agencies entitled to sovereign immunity under the
25 Eleventh Amendment. See *Brown v. Cal. Dep't of Corr.*, 554 F.3d 747,

26
27 ¹ U.S. Const. Amend. XI states: "The Judicial power of the United
28 States shall not be construed to extend to any suit in law or equity,
commenced or prosecuted against one of the United States by Citizens of
another State, or by Citizens or Subjects of any Foreign State."

1 752 (9th Cir. 2009); *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1195
2 (9th Cir. 2005); *Natural Resources Defense Council v. California*
3 *Dep't of Tranp.*, 96 F.3d 420, 421 (9th Cir. 1996); *Taylor v. List*,
4 880 F.2d 1040, 1045 (9th Cir. 1989) (concluding that Nevada
5 Department of Prisons was a state agency entitled to Eleventh
6 Amendment immunity). There is no indication that California or its
7 officers have waived immunity, nor did Congress waive the state's
8 immunity pursuant to its remedial enforcement powers under the
9 Fourteenth Amendment. *Montana v. Goldin*, 394 F.3d 1189, 1195 (9th
10 Cir. 2005) (unless they specifically waive their immunity, states and
11 state agencies are immune under the Eleventh Amendment from private
12 actions for damages or injunctive relief in federal court.)
13 Accordingly, the State of California and its prisons will be
14 dismissed without leave to amend.

15 **D. Plaintiff Has Failed to State a Viable Claim Against the Los**
16 **Angeles County Sheriff's Department or the City of Los Angeles**

17 Where a defendant is a municipality, a plaintiff must do more
18 than plead the illicit conduct by the municipality's agents to state
19 a cause of action under section 1983. A governmental entity cannot
20 be held liable under section 1983 for an injury caused solely by its
21 agents or employees based on a theory of respondeat superior or
22 vicarious liability. *Monell v. Department of Social Svs.*, 436 U.S.
23 658, 691 (1978). To establish municipal liability under § 1983, a
24 plaintiff must identify the policy or custom which caused the
25 constitutional deprivation. *Id.* Only when the execution of the
26 government's policy or custom inflicts the constitutional injury may
27 a governmental entity be held liable under section 1983. *Id.* at 694.
28 Additionally, the plaintiff must establish that the governmental

1 entity, through its deliberate conduct, was the moving force behind
2 the injury or harm suffered and must establish a direct causal link
3 between the governmental entity's action and the deprivation of a
4 federally protected right. *Bd. of the County Comm'rs v. Brown*, 520
5 U.S. 397, 403-04 (1997).

6 Here, Plaintiff has failed to allege anything more than
7 conclusory allegation of respondeat superior and/or municipal
8 liability against the City of Los Angeles and the Police Department.
9 Absent a showing of some causal connection between the policy and
10 practices of the Department and the injury, there is no basis upon
11 which the Sheriff's Department can be found liable under section
12 1983. Accordingly, the lawsuit against the City of Los Angeles and
13 the Los Angeles Police Department must be dismissed with leave to
14 amend.

15 **E. The FBI is Immune from Suit**

16 The United States, "as sovereign, is immune from suit save as
17 it consents to be sued." *United States v. Sherwood*, 312 U.S. 584,
18 586, 61 S.Ct. 767, 85 L.Ed. 1058 (1941). This immunity extends to the
19 agencies of the United States unless such immunity is waived. *FDIC*
20 *v. Meyer*, 510 U.S. 471, 475, 114 S.Ct. 996, 127 L.Ed.2d 308 (1994).
21 It has long been established that such immunity has not been waived
22 with respect to the FBI, and that the agency is immune from suit. See
23 *Gerritsen v. Consulado Gen. de Mex.*, 989 F.2d 340, 343 (9th Cir.
24 1993).

25 **F. Prosecutor Paul Minnetian is Entitled to Absolutely Immunity**

26 Plaintiff claims that prosecutor Paul Minnetian breached a plea
27 agreement that he had entered into with Plaintiff. Plaintiff does not
28 provide any supporting facts for this allegation, but it appears to

1 arise from a criminal conviction Plaintiff incurred fro robbery in
2 2009. This has been the subject of numerous other lawsuits filed by
3 Plaintiff.

4 A prosecutor is entitled to absolute immunity from claims for
5 damages under § 1983 for conduct "intimately associated with the
6 judicial phase of the criminal process," *Imbler v. Pachtman*, 424 U.S.
7 409, 430 (1976), that occurs in the course of his or her role as an
8 advocate for the State. *Buckley v. Fitzsimmons*, 509 U.S. 259, 273
9 (1993). As with judges, a prosecutor is not deprived of immunity
10 because the action he or she took was in error, was done maliciously,
11 or was in excess of his or her authority. See *Imbler*, 424 U.S. at
12 416, 434 n.34 (prosecutor's "deliberate withholding of exculpatory
13 information" and role in allegedly suborning perjury were shielded
14 by absolute immunity).

15 The allegations made by Plaintiff against Minnetian relate to
16 actions normally associated with the duties of a prosecutor as an
17 advocate in the judicial phase of the criminal process, and,
18 therefore, they are entitled to absolute prosecutorial immunity.

19

20 **III. Conclusion**

21 **IT IS THEREFORE ORDERED as follows:**

22 1. The complaint is dismissed without leave to amend as to the
23 State of California, the prisons, the FBI and Prosecutor Paul
24 Minnetian for the reasons stated above. The complaint is dismissed
25 without prejudice and with leave to amend as to the City of Los
26 Angeles and the Los Angeles Police Department.

27 2. Plaintiff has until **June 22, 2012**, to file a first amended
28 complaint, that remedies the defects identified in this memorandum

1 and order and complies with the requirements of the Federal Rules of
2 Civil Procedure and Local Rule 15-2.² Any amended complaint must bear
3 the docket number assigned in this case and must be labeled first
4 amended complaint. Pursuant to Fed.R.Civ.P. 8, Plaintiff should make
5 a short and plain statement of the facts underlying his claims, the
6 specific defendant to whom the facts apply; and the nature of the
7 relief he seeks. The first amended complaint must be plainly written
8 and legible.

9 3. If Plaintiff fails to timely file the amended complaint,
10 or if the amended complaint fails to properly plead a cause of action
11 against any of the dismissed defendants, the complaint will be served
12 on Officer Hernandez only.

13 4. The Court's deputy clerk shall serve on Plaintiff a copy
14 of this memorandum and order and a blank civil rights complaint form
15 bearing the case number assigned to this action and marked to show
16 that it is a "First Amended Complaint." If Plaintiff chooses to
17 continue prosecuting this action, he must use this form to the extent
18 possible and not simply attach other documents to it and attempt to
19 incorporate claims by reference to the attachments.

20
21 Dated: May 23, 2012



22
23
24 Marc L. Goldman
25 United States Magistrate Judge

26
27 ²"Every amended pleading filed as a matter of right or allowed by
28 order of Court shall be complete including exhibits. The amended
pleading shall not refer to the prior, superseded pleading." Local
Rule 15-2.