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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF CALIFORNIA  
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9 DOUGAL SAMUELS,

10 Plaintiff,

11 v.

12 PAM AHLIN, et al.,

13 Defendants.  
14

1:10-cv-00585-DAD-EPG (PC)

FINDINGS AND RECOMMENDATIONS,  
RECOMMENDING THAT PLAINTIFF'S  
CLAIM AGAINST DEFENDANT FRESNO  
COUNTY BOARD OF SUPERVISORS BE  
DISMISSED AND THAT THE COUNTY  
OF FRESNO'S MOTION TO QUASH  
SERVICE OF PROCESS BE GRANTED

(ECF NO. 53)

15 OBJECTIONS, IF ANY, DUE WITHIN  
16 TWENTY-ONE DAYS  
17

18 **I. BACKGROUND**

19 Dougal Samuels ("Plaintiff") is a civil detainee proceeding *pro se* and *in forma*  
20 *pauperis* with this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff's case was  
21 initially dismissed at the screening stage for failure to state a claim. (ECF Nos. 12 & 16).<sup>1</sup> The  
22 Ninth Circuit Court of Appeals reversed in part and remanded, stating "dismissal of Samuel's  
23 safe conditions claim was premature" and "Samuels is not barred from bringing suit against the  
24 members of the Fresno County Board of Supervisors in their official capacity." (ECF No. 22, p.  
25 3). Plaintiff filed a Third Amended Complaint on July 15, 2016. (ECF No. 40). Plaintiff's  
26 amended complaint named a number of defendants including "Fresno Board of Supervisors,"  
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28 <sup>1</sup> Magistrate Judge Gary S. Austin was the Magistrate Judge assigned to this case until October  
13, 2015. (ECF No. 33).

1 among others, but did not name any individual persons who were members of that board. Nor  
2 did it name the County of Fresno. After screening, the Court allowed Plaintiff's amended  
3 complaint to proceed "against defendants Pam Ahlin, Stephen Mayberg, Fresno County Board  
4 of Supervisors, Arnold Schwarzenegger, Audrey King, Brandon Price, Ron Withrow, Karin  
5 Hundal, Ron Howard, and Cynthia Radavasky for violation of Plaintiff's right to safe  
6 conditions under the Due Process Clause." (ECF No. 41, at p. 11).

7 On January 20, 2017, the County of Fresno filed a motion to quash service of process or  
8 to dismiss Plaintiff's action in the alternative, asserting that (1) the Fresno County Board of  
9 Supervisors ("FCBS") is a sub-unit of the County of Fresno ("County") and therefore not a  
10 "person" within the meaning of § 1983, and (2) erroneous service of process was made on the  
11 County because it is not a named defendant. (ECF No. 53). The Court held a hearing on the  
12 motion, and subsequently issued an order for Plaintiff to notify the Court if he wished to  
13 substitute the County of Fresno or any other defendants for FCBS. (ECF No. 70). Plaintiff filed  
14 a notice of non-substitution of defendants on May 22, 2017. (ECF No. 71).

15 The Court now considers the Motion to Quash service of Process, and Motion to  
16 Dismiss for Lack of Jurisdiction, by Fresno County Board of Supervisors. (ECF No. 53). The  
17 Court finds that because FCBS is a governmental sub-unit of the County, it is not a "person"  
18 subject to suit within the meaning of § 1983 and should be dismissed. The Court also finds that  
19 waiver of service was improperly directed to the County of Fresno because the County is not a  
20 named defendant. Accordingly, the Court will recommend (1) that Plaintiff's claim against  
21 FCBS be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), and (2) that the County of  
22 Fresno's motion to quash service of process be granted.

## 23 **II. PROCEDURAL HISTORY**

24 Plaintiff filed his initial complaint on April 5, 2010. (ECF No. 1). After screening  
25 Plaintiff's initial complaint, the Court dismissed the complaint with leave to amend on July 26,  
26 2012. (ECF No. 12). Plaintiff filed his First Amended Complaint on November 2, 2012 (ECF  
27 No. 15), which the Court screened and dismissed for failure to state a claim on May 3, 2013.  
28 (ECF No. 16).

1 Plaintiff appealed. (ECF No. 18). On August 21, 2014, the Ninth Circuit issued an order  
2 allowing the case to proceed on Plaintiff's safe conditions claim, stating that Plaintiff is "not  
3 barred from bringing suit against the members of the Fresno County Board of Supervisors in  
4 their official capacity." (ECF No. 22, p. 3). Accordingly, the Court ordered that the case  
5 proceed on Plaintiff's safe conditions claim. (ECF No. 24). On December 2, 2015, Plaintiff  
6 filed a Second Amended Complaint (ECF No. 36), but failed to include all previously-named  
7 defendants. The Court sought clarification regarding the defendants (ECF No. 37), and granted  
8 Plaintiff leave to file a Third Amended Complaint (ECF No. 39) after Plaintiff asserted that he  
9 intended to include all previously-named defendants (ECF No. 38). That list of defendants did  
10 not include any individual members of the Fresno County Board of Supervisors, nor did it  
11 include the County of Fresno. (ECF No. 39).

12 The Court screened Plaintiff's Third Amended Complaint and found that Plaintiff  
13 "state[d] cognizable claims for violation of his safe conditions under the Due Process Clause  
14 against Defendants Pam Ahlin, Stephen Mayberg, Fresno County Board of Supervisors, Arnold  
15 Schwarzenegger, Audrey King, Brandon Price, Ron Withrow, Karin Hundal, Ron Howard, and  
16 Cynthia Radavasky." (ECF No. 41, p. 11). The Court ordered service upon the named  
17 defendants. (ECF No. 43). In response, the County filed a motion to quash service of process or  
18 to dismiss Plaintiff's action in the alternative. (ECF No. 53). The County argued that FCBS is  
19 not a "person" within the meaning of § 1983 because it is a sub-unit of the County, and that  
20 waiver of service was improperly directed to the County. (Id. at 2).

21 On April 20, 2017, the Court held a hearing on the County's motion.<sup>2</sup> During the  
22 hearing, the Court asked Plaintiff if he wished to substitute the County or any other defendants  
23 for FCBS. However, it was difficult to understand Plaintiff due to a poor phone connection.  
24 The Court subsequently issued an order for Plaintiff to notify the Court if he wished to  
25 substitute the County or any other defendants for FCBS. (ECF No. 70). On May 22, 2017,  
26 Plaintiff filed a notice of non-substitution of defendants. (ECF No. 71).

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28 <sup>2</sup> Scott Hawkins personally appeared on behalf of Fresno County. Plaintiff telephonically  
appeared on his own behalf.

1 The case now proceeds on Plaintiff’s Third Amended Complaint.

2 **III. PLAINTIFF’S 28 U.S.C. § 1983 CLAIM AGAINST FCBS**

3 **A. Legal Standards**

4 **i. 42 U.S.C. § 1983**

5 “Section 1983 provides a cause of action for ‘the deprivation of any rights, privileges,  
6 or immunities secured by the Constitution and laws’ of the United States.” Wilder v. Virginia  
7 Hosp. Ass’n, 496 U.S. 498, 508 (1990); 42 U.S.C. § 1983. Section 1983 “‘is not itself a source  
8 of substantive rights,’ but merely provides ‘a method for vindicating federal rights conferred  
9 elsewhere.’” Graham v. Connor, 490 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443  
10 U.S. 137, 144 n.3 (1979)).

11 To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a  
12 right secured by the Constitution or laws of the United States was violated; and (2) that the  
13 alleged violation was committed by a person acting under the color of state law. West v.  
14 Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir.  
15 1987).

16 Local government units, such as cities and municipalities, are considered “persons”  
17 within the meaning of § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 70 (1989);  
18 Monell v. Dept. of Social Services of City of New York, 436 U.S. 658, 690 (1978). However,  
19 municipal sub-units are not considered “persons” within the meaning of § 1983. Sanders v.  
20 Aranas, No. 1:06-cv-1574-AWI-SMS, 2008 WL 268972, at \*2-3 (E.D. Cal. Jan. 29, 2008)  
21 (citing United States v. Kama, 394 F.3d 1236, 1239-40 (9th Cir. 2005) (Ferguson, J.,  
22 concurring); see also Gomez v. Fresno Police Dept., No. 1:16-cv-00526-LJO-SKO, 2016 WL  
23 2939416, slip op. at \*4 (E.D. Cal. May 20, 2016) (“[M]unicipal departments and sub-units,  
24 including police departments, are generally not considered ‘persons’ within the meaning  
25 of Section 1983.”); Ledesma v. Kern Cty., No. 1:14-cv-01634-DAD-JLT, 2016 WL 6666900,  
26 slip op. at \*18 (E.D. Cal. Nov. 10, 2016) (“[S]ub-departments or bureaus of municipalities...  
27 are not generally considered ‘persons’ within the meaning of § 1983.”).

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1           **ii.     28 U.S.C. § 1915(e)(2)**

2           28 U.S.C. § 1915(e)(2) provides that courts shall dismiss a case at any time if it  
3 determines that, inter alia, it is frivolous or malicious, fails to state a claim on which relief may  
4 be granted, or seeks monetary relief against a defendant who is immune from such relief. A  
5 central function of this screening process is to “discourage the filing of, and waste of judicial  
6 and private resources upon, baseless lawsuits that paying litigants generally do not initiate  
7 because of the cost of bringing suit.” Neitzke v. Williams, 490 U.S. 319, 327 (1989).

8           A complaint is required to contain “a short and plain statement of the claim showing  
9 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
11 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell  
12 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual  
13 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Id. (quoting  
14 Twombly, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting this  
15 plausibility standard. Id. at 679. While a plaintiff’s allegations are taken as true, courts “are not  
16 required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681  
17 (9th Cir. 2009) (internal quotation marks and citation omitted). Additionally, a plaintiff’s legal  
18 conclusions are not accepted as true. Iqbal, 556 U.S. at 678.

19           Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal  
20 pleadings drafted by lawyers.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (holding that  
21 *pro se* complaints should continue to be liberally construed after Iqbal).

22           **B.     Analysis**

23           To state a claim under § 1983, a plaintiff must allege that the “violation was committed  
24 by a **person** acting under the color of state law.” West, 487 U.S. at 48 (emphasis added).  
25 Plaintiff contends that FCBS is a “person” because local governments are “persons” under §  
26 1983 (ECF No. 71, p. 2), and that suit was brought against FCBS by name in its official  
27 capacity (ECF No. 62, p. 3).

28           Local governments are considered “persons” subject to suit within the meaning of §

1 1983. Monell, 436 U.S. at 690. Municipal sub-units are not considered “persons” within the  
2 meaning of § 1983. Sanders, 2008 WL 268972, at \*2-3. As Defendant points out, FCBS is a  
3 sub-unit of the County (ECF No. 53, p. 4) and therefore not a “person” subject to suit under §  
4 1983. Ronje v. Kramer, No. 1:15-cv-01753 LJO-BAM (PC), 2016 WL 7116721, at \*6 (E.D.  
5 Cal. Dec. 6, 2016) (finding that Fresno County Board of Supervisors is not a “person” within  
6 the meaning of § 1983).

7 Plaintiff also asserts that FCBS is a proper defendant based on the Ninth Circuit’s order  
8 holding that “Samuels is not barred from bringing suit against the members of the Fresno  
9 County Board of Supervisors in their official capacity.” (ECF No. 22, p. 3); (ECF No. 62, p. 6).  
10 Plaintiff interprets the Ninth Circuit’s holding to mean that FCBS is a proper defendant. (ECF  
11 No. 62, p. 4-5). Plaintiff argues that “Defendants were sued as the FCBS by name in their  
12 *Official-capacity* [sic], which is an identification of each as a part of a whole department....  
13 Plaintiff claims that he rejects the argument that state officials, even though sued in their  
14 ‘official-capacity’, [sic] are persons under section 1983.” (ECF No. 62, p. 3).

15 Plaintiff misunderstands the Ninth Circuit’s holding and applicable law. Suits against  
16 members in their official capacity are treated as suits against the office. See Hafer, 502 U.S. at  
17 25. Under § 1983, suit could be brought against FCBS’s individual members in their official  
18 capacity, i.e., specific persons who acted as members of the Board, or against the County.  
19 However, Plaintiff has not brought suit against any FCBS individual members in their official  
20 capacity or the County. Instead, Plaintiff has brought suit against FCBS (ECF Nos. 40, 71),  
21 which is not a “person” under § 1983, and has indicated he does not want to substitute either  
22 individual members or the County of Fresno as defendants.

23 Because Plaintiff cannot bring a valid claim under § 1983 against FCBS for the reasons  
24 discussed above, the Court recommends dismissing Plaintiff’s claim against FCBS pursuant to  
25 § 1915(e)(2)(B)(ii). The Court also recommends denying the County of Fresno’s motion to  
26 dismiss Plaintiff’s action in the alternative as moot.<sup>3</sup>

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28 <sup>3</sup> The County moved to dismiss this action under Federal Rules of Civil Procedure 12(b)(2) (lack  
of personal jurisdiction), 12(b)(4) (insufficient process), and 12(b)(5) (insufficient service of process). (ECF No.

1           **IV. COUNTY OF FRESNO’S MOTION TO QUASH SERVICE OF PROCESS**

2           **A. Legal Standard**

3           “Rule 12(b)(4) was designed to challenge irregularities in the contents of a summons.”  
4 Cranford v. U.S., 359 F.Supp.2d 981, 984 (E.D. Cal. 2005) (citing Chilicky v. Schweiker, 796  
5 F.2d 1131, 1136 (9th Cir. 1986), rev’d on other grounds, 487 U.S. 412 (1988)). “[A] motion to  
6 dismiss or quash service pursuant to Federal Rules of Civil Procedure 12(b)(5) challenges the  
7 sufficiency of the manner of attempted service.” Perrotte v. Johnson, No. 1:15-cv-00026-LJO-  
8 SAB (PC), 2016 WL 4440972, slip op. at \*4 (E.D. Cal. Aug. 19, 2016).

9           Rule 4 of the Federal Rules of Civil Procedure governs service. Fed. R. Civ. P. 4. Under  
10 Rule 4(d), notice and request for a waiver of service must, inter alia, be addressed to the  
11 individual defendant. Fed. R. Civ. P. 4(d)(1)(A)(i). “Where service of process is insufficient,  
12 the court has broad discretion to dismiss the action or to retain the case but quash the service  
13 that has been made on defendant.” Cranford, 359 F.Supp.2d at 984 (citing Montalbano v. Easco  
14 Hand Tools, Inc., 766 F.2d 737, 740 (2d Cir. 1985).

15           **B. Analysis**

16           The Court ordered service on FCBS on September 29, 2016. (ECF No. 43). Plaintiff  
17 wrongly directed waiver of service to the County itself, which is not a named defendant. First,  
18 as discussed above, FCBS is not a proper defendant in a § 1983 claim. Second, waiver of  
19 service was directed to the County, which is not a defendant to this action. (ECF No. 53, p. 7).  
20 The attempted service was therefore improper.

21           As described above, the Court previously provided Plaintiff with an opportunity to  
22 substitute the County or any other defendants in place of FCBS. (ECF No. 70). Plaintiff  
23 declined to substitute any defendants. (ECF No. 71).

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24  
25 53). It did not specifically move to dismiss for failure to state a claim under Rule 12(b)(6). 28 U.S.C. §  
26 1915(e)(2)(B)(ii) provides that courts shall, *sua sponte*, dismiss a case brought by plaintiffs proceeding *in forma*  
27 *pauperis* at any time if it determines that the complaint fails to state a claim on which relief may be granted:  
28 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at  
any time if the court determines that... the action or appeal... fails to state a claim on which relief may be  
granted.” 28 U.S.C. § 1915(e)(2)(B)(ii) (1996). Accordingly, the Court recommends dismissal under §  
1915(e)(2)(B)(ii), for failure to state a claim because it the County’s intention in its motion to dismiss and is within  
the Court’s *sua sponte* power.

1 Accordingly, the Court recommends that the County's motion to quash service of  
2 process be granted.

3 **V. CONCLUSION AND RECOMMENDATIONS**

4 The Court finds that Plaintiff's Third Amended Complaint fails to state a claim against  
5 defendant FCBS, and that waiver of service was improperly directed to the County.

6 Accordingly, based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 7 (1) Plaintiff's § 1983 claim against the Fresno County Board of Supervisors be  
8 DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii);  
9 (2) The County of Fresno's motion to quash service of process be GRANTED;  
10 and  
11 (3) The County of Fresno's request to dismiss Plaintiff's action in the  
12 alternative be DENIED as moot.

13 These findings and recommendations will be submitted to the United States District  
14 Court Judge assigned to this action pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
15 **twenty-one (21) days** after being served with a copy of these findings and recommendations,  
16 any party may file written objections with the court and serve a copy on all parties. Such a  
17 document should be captioned "Objections to Magistrate Judge's Findings and  
18 Recommendations." Any reply to the objections shall be served and filed within **ten (10) days**  
19 after service of the objections. The parties are advised that failure to file objections within the  
20 specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d  
21 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22  
23 IT IS SO ORDERED.

24 Dated: July 24, 2017

25 /s/ Eric P. Gray  
26 UNITED STATES MAGISTRATE JUDGE  
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28