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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL J. PIAZZA,	)	1:11-cv-01536-AWI-BAM
	)	
Plaintiff,	)	<b>SCREENING ORDER ON PLAINTIFF’S</b>
	)	<b>COMPLAINT</b>
v.	)	
D. R. BRACKETT, DEREK PERRY,	)	(Doc. 1)
	)	
Defendants.	)	
_____	)	

**I. Introduction**

Plaintiff Michael J. Piazza (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action against defendants D. R. Brackett, a California Highway Patrol Officer (hereinafter referred to as “Brackett”), and Derek Perry, a detective with the Ceres Police Department (hereinafter referred to as “Perry”) (Perry and Brackett are collectively referred to as the “Defendants”) on September 8, 2011. (Doc. 1.)

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1 **II. Screening Requirement**

2 The Court is required to screen complaints brought by prisoners seeking relief against a  
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
4 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
5 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or  
6 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
7 §§ 1915A(b)(1)-(2); 28 U.S.C. § 1915(e)(2). If the Court determines that the complaint fails to  
8 state a claim, leave to amend may be granted to the extent that the deficiencies of the complaint  
9 can be cured by amendment. *Lopez v. Smith*, 203 F.3d 1122 (9th Cir. 2000) (en banc).

10 A complaint must contain “a short and plain statement of the claim showing that the  
11 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
12 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing  
14 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff  
15 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its  
16 face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555).

17 In reviewing a complaint under this standard, the Court must accept as true the factual  
18 and nonconclusory allegations of the complaint in question, *Hospital Bldg. Co. v. Trustees of Rex*  
19 *Hospital*, 425 U.S. 738, 740 (1976), construe the pro se pleadings liberally in the light most  
20 favorable to the Plaintiff, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all  
21 doubts in the Plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

22 **III. Plaintiff’s claims**

23 Plaintiff alleges that on August 25, 2008, Defendants used excessive force and “inflicted  
24 cruel and unusual punishment” in affecting Plaintiff’s arrest at 1215 Glenn Avenue, Modesto,  
25 CA 95351. (Pl.’s Compl., 5, Doc. 1.) Plaintiff alleges Defendants, prior to affecting Plaintiff’s  
26 arrest on August 25, 2008, towed a 1988 Ford Bronco from the Glenn avenue residence and  
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1           Construing the facts alleged as true, and in the light most favorable to the Plaintiff,  
2 Defendants conduct was an unlawful and excessive use of force, violating Plaintiff’s rights under  
3 the Fourth Amendment. Thus, the complaint states a cognizable claim for relief under section  
4 1983 against Defendants Perry and Brackett. *See Bernat v. California City Police Dept.*, 2011  
5 WL 1103130, at \*6 (E.D. Cal. Mar.22, 2011) (Wanger, J.) (“it has long been settled that  
6 gratuitous use of force against a compliant, nonthreatening suspect violates the Fourth  
7 Amendment.”)

8 **V. Conclusion**

9           For the reasons set forth above, the Court finds that Plaintiff’s claims against Defendants  
10 Perry and Brackett under 42 U.S.C. § 1983 may proceed as those claims are sufficiently pled for  
11 purposes of pro se screening.

12           IT IS SO ORDERED.

13 **Dated: January 9, 2012**

**/s/ Barbara A. McAuliffe**  
UNITED STATES MAGISTRATE JUDGE