

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

BRUCE BERNNA,

Plaintiff,

V.

DEPARTMENT OF JUSTICE BUREAU OF
FIREARMS, et al.,

Defendants.

Case No. 1:14-cv-01972---SAB

**ORDER DISMISSING COMPLAINT, WITH
LEAVE TO AMEND WITHIN THIRTY (30)
DAYS**

On December 11, 2014, Plaintiff Bruce Berna (“Plaintiff”) filed the complaint in this case. (ECF No. 1.) The Complaint names the Department of Justice Bureau of Firearms and Special Weapons and Tactics and Agent Michael Rios as defendant in this action (“Defendants”).

For the reasons set forth below, the Court finds that Plaintiff's complaint fails to state any cognizable claims and that Plaintiff's complaint should be dismissed, with leave to amend.

I.

SCREENING

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or

1 that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
2 1915(e)(2)(B).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate
8 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.
9 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

10 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
11 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
12 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
13 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
14 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
15 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
16 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
17 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572
18 F.3d at 969.

19 **II.**

20 **PLAINTIFF’S COMPLAINT**

21 Plaintiff alleges that he filed a “public records request” with the Bureau of Firearms five
22 times over three months. The request concerned the seizure of Plaintiff’s shotgun. Plaintiff
23 alleges that these records are needed “to help prove ... their officers[’] pejury under oath to
24 falsely arrest [Plaintiff] and cause [Plaintiff] to be falsely imprisoned.” (Compl., at pg. 5.).

25 Plaintiff also alleges that he executed a “power of attorney” in favor of Ron Hendricks.
26 Plaintiff alleges that the Bureau of Firearms failed to turn over the records to Mr. Hendricks
27 pursuant to the power of attorney.

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1 Plaintiff requests copies of the documents requested in his records act request, costs, and
2 that Defendants give “one mossberg shotgun” to Mr. Hendricks.

3 **III.**

4 **DISCUSSION**

5 **A. Plaintiff’s Claims**

6 Plaintiffs bring this suit because officials from the Department of Justice failed to
7 produce records in response to Plaintiff’s request under California’s Public Records Act.
8 California’s Public Records Act, by its own terms, governs the disclosure of records from state
9 and local agencies. See Cal. Gov’t Code § 6252 and 6253. The Department of Justice is a
10 federal agency, not a state or local agency. Although the Court is not privy to the thought
11 processes of those within the Department of Justice who received Plaintiff’s request, the Court
12 presumes that the Department of Justice did not respond to Plaintiff’s request under California’s
13 Public Records Act because California’s Public Records Act does not apply to the Department of
14 Justice. In any case, Plaintiff fails to state a claim for the violation of his rights under the
15 California Public Records Act because the Department of Justice has no legal obligation to
16 respond to requests under California’s Public Records Act.

17 Plaintiff’s complaint also raises allegations pertaining to the Department of Justice’s
18 failure to deliver Plaintiff’s shotgun to Ron Hendricks. However, Plaintiff fails to cite any
19 statute or law which requires the Department of Justice to transfer possession of the shotgun to
20 Ron Hendricks pursuant to the “power of attorney” signed by Plaintiff. Accordingly, Plaintiff
21 fails to state any claim against Defendants, as the Court is unaware of any law which requires
22 Defendants to transfer possession of Plaintiff’s shotgun to Mr. Hendricks simply because
23 Plaintiff executed a “power of attorney” document granting Mr. Hendricks possession and
24 control over Plaintiff’s property.

25 Moreover, the transfer of firearms is regulated under California law. See Cal. Penal Code
26 §§ 26500, et seq. These regulations include procedures and restrictions regarding the transfer of
27 firearms between private entities, and require the transfer to be conducted through a licensed
28 person. See Cal. Penal Code § 28050. Nothing in the California Penal Code authorizes Plaintiff

1 to transfer his firearm to Mr. Hendricks simply by signing and notarizing a “power of attorney.”

2 Finally, the Court finds that Plaintiff has not alleged any facts which suggest the
3 existence of federal jurisdiction over Plaintiff’s claims. It appears that Plaintiff’s claims arise
4 under state law and there is no federal question jurisdiction or diversity jurisdiction over
5 Plaintiff’s claims.

6 **B. Leave to Amend**

7 “Generally, Rule 15 advises the court that ‘leave [to amend the complaint] shall be freely
8 given when justice so requires.’ This policy is ‘to be applied with extreme liberality.’”
9 Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (quoting Owens v.
10 Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). The factors the Court
11 should consider in deciding whether to grant leave to amend include undue delay, bad faith or
12 dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments
13 previously allowed, undue prejudice to the opposing party by virtue of allowance of the
14 amendment, and futility of the amendment. Id. at 1052.

15 In accordance with the “extreme liberality” with which leave to amend should be granted,
16 the Court will grant Plaintiff an opportunity to amend the complaint to cure the deficiencies
17 identified herein.

18 **IV.**

19 **CONCLUSION AND ORDER**

20 Based upon the foregoing, the Court finds that Plaintiff’s complaint fails to state any
21 cognizable claims.

22 Accordingly, it is HEREBY ORDERED that Plaintiff’s complaint is dismissed, with
23 leave to amend. Plaintiff shall file his amended complaint, if any, within thirty (30) days from
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1 the date of service of this order. Plaintiff is forewarned that failure to file a timely amended
2 complaint will result in a recommendation to a district judge that this action be dismissed and
3 closed.

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5 IT IS SO ORDERED.

6 Dated: December 22, 2014



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UNITED STATES MAGISTRATE JUDGE