

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RANDY LANGLEY,

Plaintiff,

v.

TULARE POLICE DEPARTMENT and
OFFICER COLEJIO,

Defendants.

Case No. 1:16-cv-0336-DAD-SKO

**ORDER GRANTING PLAINTIFF'S
APPLICATION TO PROCEED IN
FORMA PAUPERIS
(Doc. 47)**

**ORDER VACATING SCHEDULING
ORDER PENDING SCREENING OF THE
COMPLAINT
(Doc. 23)**

Plaintiff, Randy Langley, is a prisoner in the custody of the California Department of Corrections and Rehabilitation and is housed at the Sierra Conservation Center. On February 5, 2016, Plaintiff, proceeding *pro se*, filed a Complaint in the Superior Court of California, County of Tulare, against Defendants “Tulare Police Department,” “Officer Colejio,” and “Doe 1,” alleging causes of action for “[g]eneral [n]egligence,” “[i]ntentional [t]ort,” “false imprisonment, battery, cruel and unusual punishment, wrongful prosecution, conviction, violation of civil rights, [and] police misconduct/brutality” arising out of his arrest by Defendants. (Doc. 2, Ex. 1 at 7–11.) Plaintiff seeks compensatory damages and punitive damages in the amount of \$100 million. (*Id.* at 9.)

Defendant City of Tulare (erroneously named as Tulare Police Department) filed their answer in state court and, on March 10, 2016, removed the action to this Court. (Doc. 2.) On July 20, 2017, Plaintiff filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (Doc. 47.) Plaintiff has made the showing required § 1915(a) and accordingly, the request to proceed *in forma pauperis* will be granted.

1 The Court is required to screen complaints brought by prisoners seeking relief against a
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). A
3 complaint, or portion thereof must be dismissed if the prisoner has raised claims that are legally
4 frivolous, malicious, fail to state a claim upon which relief may be granted, or that seek monetary
5 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2); 28 U.S.C.
6 § 1915(e)(2)(B)(i)–(iii). This case was removed to this Court by Defendant City of Tulare¹ such
7 that Plaintiff only recently filed his application to proceed *in forma pauperis* and none of
8 Plaintiff’s claims have been screened. However, a scheduling order has issued under which the
9 parties are presumably engaging in discovery. (*See* Doc. 23.)

10 At a mere glance, it is apparent to the Court that not all of the claims Plaintiff asserts in the
11 Complaint are cognizable. It would be a waste of limited judicial resources, as well as both time
12 and effort by the parties, for this case to proceed without screening. As such, it is reasonable to
13 vacate the dates set in the scheduling order, including deadlines for discovery, until the Complaint
14 has been screened and cognizable claims have been found on which Plaintiff may proceed. *See,*
15 *e.g., Marshall v. Stanton*, No. CIV S-04-1694 LKK PAN P, 2006 WL 2382271, at *3 (E.D. Cal.
16 Aug. 17, 2006).

17 Accordingly, IT IS HEREBY ORDERED that
18 1. Plaintiff’s application to proceed *in forma pauperis* (Doc. 47) is GRANTED;
19 2. The dates set forth in the scheduling order entered September 8, 2016 (Doc. 23),
20 are VACATED and will be reset, as appropriate, in a revised scheduling order to be
21 issued following the screening by the Court of the Complaint; and

22 //
23 //
24 //
25 //

27 ¹ As the Court has previously noted, *see* Docs. 40 & 48, there is no indication that Defendant Officer Colejio has
28 properly “received—through service or otherwise—a copy of the initial pleading stating the claim for relief” or was
“served with the summons for an initial pleading on file at the time of service,” thereby triggering Defendant Officer
Colejio’s legal obligation to respond to Plaintiff’s complaint under Fed. R. Civ. P. 81(c)(2)(A).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. The Clerk of the Court is directed to serve a copy of this order and a copy of Plaintiff's *in forma pauperis* application on the Warden of Sierra Conservation Center, via the Court's electronic case filing system (CM/ECF).

IT IS SO ORDERED.

Dated: August 3, 2017

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE