

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

GUILLERMO G. PAEZ, JR.,

Plaintiff,

v.

FRESNO COUNTY SHERIFF'S
DEPARTMENT,

Defendant.

Case No. 1:17-cv-00455-BAM-PC

SCREENING ORDER GRANTING
PLAINTIFF LEAVE TO FILE AMENDED
COMPLAINT
(ECF No. 1)

THIRTY-DAY DEADLINE

Plaintiff Guillermo G. Paez, Jr. ("Plaintiff") is currently housed at the Fresno County Jail and proceeds in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's complaint, filed on March 30, 2017, is currently before the Court for screening.

I. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

A complaint must contain "a short and plain statement of the claim showing that the

1 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
2 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
3 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,
4 1949 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
5 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
6 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
7 (internal quotation marks and citation omitted).

8 To survive screening, Plaintiff’s claims must be facially plausible, which requires
9 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
10 for the misconduct alleged. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted);
11 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a
12 defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of
13 satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks
14 omitted); *Moss*, 572 F.3d at 969.

15 II. Allegations in Complaint

16 Plaintiff is currently housed at the Fresno County Jail. He names the Fresno County
17 Sheriff’s Department (Jail Division) as the sole defendant in this action. Plaintiff’s complaint
18 concerns allegations that the Defendant Sheriff’s Department violated his Eighth Amendment
19 right to be free from cruel and unusual punishment.

20 Plaintiff alleges as follows: On November 16, 2016, Plaintiff was in the custody of
21 Defendant Sheriff’s Department and was brought to the Community Regional Medical Center
22 Emergency Room for clearance prior to being booked into the Fresno County Jail. Plaintiff had
23 an open wound from removal of muscle and skin tissue caused by a surgeon’s use of an
24 infected/dirty medical instrument on November 12, 2016. While admitted, Plaintiff was taken to
25 the x-ray room for x-rays of his right forearm and bone structure. Plaintiff was shackled to the
26 hospital bed and was being treated for positive MRSA. Plaintiff was seen by the hospital’s
27 orthopedic/burn doctor for skin grafting intervention. Plaintiff was scheduled for skin grafting
28 and had a pick-line installed on his left side for IV antibiotics and a wound vac to help remove

1 the MRSA infection from spreading before the skin graft intervention. After the Defendant
2 Sheriff's Department learned that Plaintiff was to have these procedures performed, they
3 released him on continued parole with charges dropped. The following day, Plaintiff was
4 approached by an unknown case manager from the hospital who stated that the Defendant
5 Sheriff's Department did not want to pay for Plaintiff's medical coverage.

6 Plaintiff alleges that Defendant Sheriff's Department knew and should have known that
7 Plaintiff was suffering life threatening injuries while under its custody and supervision. Plaintiff
8 further alleges that instead of summoning medical assistance with medical coverage, Defendant
9 Sheriff's Department dropped the charges against him without provocation and walked out,
10 "having maliciously and sadistically, for the purpose of causing harm by not having financial
11 responsibility for medical coverage." (ECF No. 1 at p. 4.) Plaintiff contends that Defendant
12 Sheriff's Department's failure to keep him safe from harm demonstrates deliberate indifference
13 to his Eighth Amendment rights. Plaintiff also contends that as a result of Defendant Sheriff's
14 Department's failure to ensure his right to be free from cruel and unusual punishment, he has
15 suffered and will continue to suffer physical injuries in the form of irreparable nerve damage,
16 loss of feeling, and pain and suffering in his right arm.

17 Plaintiff seeks injunctive and declaratory relief, along with compensatory and punitive
18 damages.

19 **III. Discussion**

20 Plaintiff's complaint fails to state a cognizable claim upon which relief may be granted.
21 As Plaintiff is a jail inmate proceeding pro se, he will be granted leave to amend to the cure the
22 deficiencies identified in his complaint to the extent he can do so in good faith. To assist
23 Plaintiff, the Court provides the following pleading and legal standards.

24 **A. Defendant Fresno County Sheriff's Department**

25 As indicated above, Plaintiff names the Fresno County Sheriff's Department (Jail
26 Division) as the sole defendant in this action. Section 1983 applies to municipalities and other
27 local governmental entities, but not municipal departments. *Collins v. City of Harker Heights,*
28 *Tex.*, 503 U.S. 115, 121 (1992); *Vance v. Cty. of Santa Clara*, 928 F. Supp. 993, 995–96 (N.D.

1 Cal. 1996). A sheriff's department, which is a subdivision of a local governmental entity, is not a
2 proper defendant for purposes of Plaintiff's section 1983 claims. *See Nelson v. Cty. of*
3 *Sacramento*, 926 F.Supp.2d 1159, 1170 (E.D. Cal. 2013). Plaintiff therefore cannot state a claim
4 against the Fresno County Sheriff's Department. In any amended complaint, Plaintiff may name
5 the County of Fresno if he wishes to pursue claims against its departments or agencies.

6 Even if the Court were to construe Plaintiff's claims as brought against the County of
7 Fresno, Plaintiff's allegations are insufficient to state a cognizable claim. A municipality or
8 county may be held liable under Section 1983 only for constitutional violations occurring as the
9 result of an official government policy or custom. *Collins*, 503 U.S. at 121; *Monell v. Dep't of*
10 *Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978); *Pembaur v. City of Cincinnati*, 475
11 U.S. 469, 483 (1986) (extending *Monell* municipal liability to counties). To assert a valid section
12 1983 claim against Fresno County, Plaintiff must show both a deprivation of constitutional rights
13 and a departmental policy or custom that was the "moving force" behind the constitutional
14 violation. *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 957 (9th Cir. 2008). There must
15 be a "direct causal link between a [County] policy or custom and the alleged constitutional
16 deprivation." *Id.* (citation and quotation omitted). Here, Plaintiff fails to identify a policy or
17 custom that led to the alleged constitutional violation.

18 **B. Medical Care**

19 Plaintiff alleges that his Eighth Amendment right to medical care was violated. At the
20 time of the alleged incident, it appears that Plaintiff was a pretrial detainee as he was being
21 evaluated prior to his booking in the Fresno County Jail.

22 The standard applicable to a pretrial detainee's claim for untreated medical needs under
23 the Fourteenth Amendment is presently not clear. In the past, such claims were subject to the
24 same state of mind requirement as an Eighth Amendment violation, i.e., subjective and deliberate
25 indifference to a substantial risk of serious harm. *See Clouthier v. County of Contra Costa*, 591
26 F.3d 1232 (9th Cir. 2010). However, that holding was called into question by the United States
27 Supreme Court in a Fourteenth Amendment excessive force case, *Kingsley v. Hendrickson*, 135
28 S. Ct. 2466, 2473 (2015). The Ninth Circuit extended the *Kingsley* rationale to a Fourteenth

1 Amendment failure-to-protect claim. *Castro v. Cty. of Los Angeles*, 833 F.3d 1060, 1071 (9th
2 Cir. 2016). And, in *Guerra v. Sweeny*, No. 1:13-cv-01077-AWI-BAM (PC), 2016 WL 5404407
3 (E.D. Cal. Sept. 27, 2016) (Ishii, J.), *Castro* was extended to an untreated medical needs case.
4 The *Guerra* court determined that the elements of such a claim are: “(1) The plaintiff made a
5 request for medical care or the need for care was glaringly obvious; (2) The plaintiff had a
6 serious medical need; (3) The defendant did not take reasonable steps to obtain or provide
7 medical care, even though a reasonable officer (or reasonable medical staff) in the circumstances
8 would have appreciated the high degree of risk involved—making the likelihood of harm
9 obvious; and (4) By not taking such measures, the defendant caused the plaintiff's injuries.” *Id.*
10 at *3.

11 Regardless of the standard applied, Plaintiff fails to provide sufficient factual allegations
12 to support a claim for denial of medical care. According to the complaint, Plaintiff was taken to
13 Community Regional Medical Center where he received x-rays, treatment for a MRSA infection,
14 antibiotics and a wound vac while under the custody and supervision of Defendant Sheriff's
15 Department. As currently pled, Plaintiff's allegations suggest that he is seeking “medical
16 coverage,” i.e., payment for his treatment. Plaintiff fails to allege that he did not receive
17 necessary medical treatment while in custody.

18 Further, Plaintiff has no constitutional right to continued prosecution of his case so that
19 he may remain in jail. *Forte v. Merced Cty.*, No. 1:15-CV-0147 KJM-BAM, 2016 WL 159217,
20 at *5 (E.D. Cal. Jan. 13, 2016), *report and recommendation adopted*, No. 1:15-CV-0147-KJM-
21 BAM, 2016 WL 739798 (E.D. Cal. Feb. 25, 2016) (The court has previously explained that a
22 defendant in a criminal case has no constitutional right to the continuation of a prosecution
23 against him.) Any claim that Plaintiff's constitutional rights were violated because the charges
24 were dropped fails to state a cognizable claim.

25 **IV. Conclusion and Order**

26 Plaintiff's complaint fails to state a cognizable claim for relief. The Court will grant
27 Plaintiff leave to amend to cure the identified deficiencies to the extent he is able to do so in
28 good faith. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
2 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, *Iqbal*,
3 556 U.S. at 678-79, 129 S.Ct. at 1948-49. Although accepted as true, the "[f]actual allegations
4 must be [sufficient] to raise a right to relief above the speculative level" *Twombly*, 550 U.S.
5 at 555 (citations omitted).

6 Additionally, Plaintiff may not change the nature of this suit by adding new, unrelated
7 claims in his first amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
8 "buckshot" complaints).

9 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
10 *Lacey*, 693 F.3d at 927. Therefore, Plaintiff's amended complaint must be "complete in itself
11 without reference to the prior or superseded pleading." Local Rule 220.

12 Based on the foregoing, it is HEREBY ORDERED that:

- 13 1. The Clerk's Office shall send Plaintiff a complaint form;
- 14 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
15 first amended complaint curing the deficiencies identified by the Court in this order; and
- 16 3. If Plaintiff fails to file an amended complaint in compliance with this order, the
17 Court will recommend dismissal of this action, with prejudice, for failure to obey a court
18 order and for failure to state a claim.

19
20 IT IS SO ORDERED.

21 Dated: November 28, 2017

21 /s/ Barbara A. McAuliffe
22 UNITED STATES MAGISTRATE JUDGE