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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

NIKO RAMIREZ,
Plaintiff,
v.
KGET CHANNEL 17 NEWS,
Defendant.

Case No. 1:23-CV-00737-HBK
ORDER TO ASSIGN TO DISTRICT JUDGE
FINDINGS AND RECOMMENDATIONS TO
DISMISS COMPLAINT FOR FAILURE TO
STATE A FEDERAL CLAIM
(Doc. No. 8)

Plaintiff Niko Ramirez, a state prisoner, initiated this action by filing a civil rights complaint against defendant, KGET Channel 17 News. (Doc. No. 8, “Complaint”). The undersigned has screened the Complaint pursuant to 28 U.S.C. § 1915A, and for the reasons set forth herein, recommends that the district court dismiss the Complaint without leave to amend because the Complaint fails to state a federal claim and any amendment would be futile.

SCREENING REQUIREMENT

A plaintiff who commences an action while in prison is subject to the Prison Litigation Reform Act (“PLRA”), which requires, *inter alia*, the court to screen a complaint that seeks relief against a governmental entity, its officers, or its employees before directing service upon any defendant. 28 U.S.C. § 1915A. This requires the court to identify any cognizable claims and dismiss the complaint, or any portion, if 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

1 such relief. *See* 28 U.S.C. §§ 1915A(b)(1), (2).

2 At the screening stage, the court accepts the factual allegations in the complaint as true,
3 construes the complaint liberally, and resolves all doubts in the plaintiff’s favor. *Jenkins v.*
4 *McKeithen*, 395 U.S. 411, 421 (1969); *Bernhardt v. L.A. County*, 339 F.3d 920, 925 (9th Cir.
5 2003). The Court’s review is limited to the complaint, exhibits attached, and materials
6 incorporated into the complaint by reference, and matters of which the court may take judicial
7 notice. *Petrie v. Elec. Game Card, Inc.*, 761 F.3d 959, 966 (9th Cir. 2014); *see also* Fed. R. Civ.
8 P. 10(c). A court does not have to accept as true conclusory allegations, unreasonable inferences,
9 or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir.
10 1981). Critical to evaluating a constitutional claim is whether it has an arguable legal and factual
11 basis. *See Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

12 The Federal Rules of Civil Procedure require only that a complaint include “a short and
13 plain statement of the claim showing the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2).
14 Nonetheless, a claim must be facially plausible to survive screening. This requires sufficient
15 factual detail to allow the court to reasonably infer that each named defendant is liable for the
16 misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Moss v. U.S. Secret Service*,
17 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully is not
18 sufficient, and mere consistency with liability falls short of satisfying the plausibility standard.
19 *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d at 969. Although detailed factual allegations are not
20 required, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
21 statements, do not suffice,” *Iqbal*, 556 U.S. at 678 (citations omitted), and courts “are not required
22 to indulge unwarranted inferences,” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir.
23 2009) (internal quotation marks and citation omitted).

24 If an otherwise deficient pleading can be remedied by alleging other facts, a pro se litigant
25 is entitled to an opportunity to amend their complaint before dismissal of the action. *See Lopez v.*
26 *Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc); *Lucas v. Department of Corr.*, 66 F.3d
27 245, 248 (9th Cir. 1995). However, it is not the role of the court to advise a pro se litigant on how
28 to cure the defects. Such advice “would undermine district judges’ role as impartial

1 decisionmakers.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004); *see also Lopez*, 203 F.3d at 1131
2 n.13. Further, the Court need not provide an opportunity to amend where any amendment would
3 be futile, or the deficiencies cannot be cured. *Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir.
4 1995); *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

5 **SUMMARY OF ALLEGATIONS IN COMPLAINT**

6 The Complaint, filed on the standard prisoner complaint form, identifies “KGET Channel 17
7 News”, a “News[c]ast company at 2120 L Street, Bakersfield, California” as the sole Defendant.
8 (Doc. No. 8 at 1, 2). The Complaint alleges violations of the Eighth Amendment, defamation, and
9 civil harassment. (*Id.* at 3). The Complaint sets forth the following alleged facts, which are
10 presumed true at this stage for purposes of §1915A screening. On December 20, 2018, Channel 17
11 News aired an untrue story that negatively impacted Plaintiff’s life and endangered both his and his
12 family’s life. (*Id.* at 3). Specifically, the news station reported Plaintiff was a sex offender and
13 involved in a gang. (*Id.*). Because of the news report, members of the community threatened
14 Plaintiff and his family. (*Id.*). People would “driv[e] by [Plaintiff’s] house and threate[n] [his]
15 family [while] looking to harm [him].” (*Id.*). Plaintiff turned himself in to authorities “clear all
16 this up because of all the damage it had done to [him].” (*Id.*). In jail, people have threatened
17 Plaintiff that he would “be de[a]lt with if he was indeed a sex offender.” (*Id.*). Plaintiff states
18 “[t]his made my life a living hell.” (*Id.*).

19 As relief, Plaintiff seeks \$1.2 million in damages as well as injunctive relief “for the
20 Newscast Company to be held responsible for falsely airing a story that wasn’t true and for
21 endangering [his] life and [his] family[’]s life as well.” (*Id.* at 6).

22 **ANALYSIS**

23 Plaintiff invokes this Court’s federal question jurisdiction under 42 U.S.C. § 1983 for
24 alleged violations of his Eighth Amendment rights. (Doc. No. 8 at 1). To state a claim under
25 section 1983, a plaintiff must plead (1) that the defendant acted under the color of state law and
26 (2) that the defendant deprived him of rights secured by the Constitution or federal statutes.
27 *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986). The Constitution protects
28 individual rights only from government action and not from private action. As a rule, private

1 parties are deemed to actors under color of state law. *See Price v. Hawaii*, 939 F.2d 702, 702-08
2 (9th Cir. 1991).

3 Two elements must exist for the conduct of a private person to constitute state action: a
4 state policy and a state actor. The state policy element can be satisfied if there is the exercise of
5 state-created rights, privilege, or rule of conduct. The state actor element may be established
6 where there is conduct on the part of a state official, one who has acted together with a state
7 official or has obtained significant aid therefrom, or one whose conduct is otherwise chargeable to
8 the state. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982).

9 The Complaint is devoid of any facts that Defendant performed a state function or is a
10 state actor acting under the color of state law. Nor can the Court conceive of any facts that can be
11 pled that can convert Defendant into a state actor for the claims stated in the Complaint. Federal
12 Rule of Evidence 201 permits a court to take judicial notice of facts that are “not subject to
13 reasonable dispute” because they are either “generally known within the trial court’s territorial
14 jurisdiction,” or they “can be accurately and readily determined from sources whose accuracy
15 cannot reasonably be questioned.” Fed. R. Evid. 201(b). The Court may take judicial notice on its
16 own or at the request of any party. *Id.* 201(c). According to its website, “KGET TV 17 is the
17 NBC affiliate in the Bakersfield and Kern County region.”¹ The Supreme Court has determined
18 that, even networks who operates public access channels on a cable system and are licensed by
19 the government, the entity does not perform a public or government function to be deemed a
20 public actor. *Manhattan Community Access Corporation v. Halleck*, 139 U.S. 1921, ___ U.S.
21 ___, (2019). Thus, Defendant KGET Channel 17 News is not a government entity but remains a
22 private entity. Because the Defendant is not a state actor, no section 1983 claim is stated.

23 Additionally, the Prison Litigation Reform Act (PLRA) provides:

24 No Federal civil action may be brought by a prisoner confined in a
25 jail, prison, or other correctional facility, for mental or emotional
26 injury suffered while in custody without a prior showing of physical
injury.

27 42 U.S.C. § 1997e(e). This “requires a prior showing of physical injury that need not be

28 ¹ <https://www.kget.com>.

1 significant but must be more than de minimus.” *Oliver v. Keller*, 289 F.3d 623, 627 (9th Cir.
2 2002).

3 Plaintiff claims he suffers from “PTSD and fear[s] for [his] life and [his] family[’]s life
4 [which has] caused [him] stress and fear for [his] safety because of the actions of Defendant
5 KGET Channel 17 News. (Doc. No. 8 at 3). Put differently, Plaintiff seeks damages for mental or
6 emotional injury that he claims he is suffering from while in custody. Plaintiff does not allege a
7 prior physical injury of any kind. In fact, the Complaint makes clear that Plaintiff has not
8 suffered any physical injury, but rather “[he] had people in jail telling [him] that [he] would “be
9 de[a]lt with” meaning [he] would be physically assa[u]lted if [he] was indeed a sex offender.”
10 (*Id.*). Consequently, the PLRA bars Plaintiff’s monetary claim for mental or emotional injury.
11 As pled, the Complaint fails to state a cognizable federal claim under 42 U.S.C. § 1983. Instead,
12 liberally construed, the Complaint alleges a state law claim of defamation and state law claim for
13 intentional infliction of emotional distress. *See* California Civil Code §§ 44, 46 (defining
14 defamation claim); *Le v. Sandor*, 2015 U.S. Dist. LEXIS 17542 (E.D. Cal. Feb. 12, 2015)
15 (explaining a claim for intentional infliction of emotional distress arises under state law).

16 Because no federal claims exist in the action, the Court should not exercise jurisdiction
17 over these supplemental state law claims. 28 U.S.C. § 1367(c)(3); *Les Shockley Racing, Inc. v.*
18 *National Hot Rod Asso.*, 884 F.2d 504, 509 (9th Cir.1989); *see also Harr v. Channel 17 News*,
19 2016 U.S. Dist. LEXIS 21386 (E.D. Cal Feb. 19, 2016) (dismissing a state tort claim for
20 intentional infliction of emotional distress against Defendant Channel 17 News for lack of subject
21 matter jurisdiction).

22 Accordingly, it is **RECOMMENDED**:


23 The Complaint (Doc. No. 8) be dismissed for failure to state a federal claim.

24 **NOTICE TO PARTIES**

25 These findings and recommendations will be submitted to the United States district judge
26 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
27 **days** after being served with these findings and recommendations, a party may file written
28 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s

1 Findings and Recommendations.” Parties are advised that failure to file objections within the
2 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
3 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
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5 Dated: July 7, 2023
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HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE
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