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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALAN BECKHAM,

Plaintiff,

v.

AGENT BELL and STOCKTON
PAROLE SUPERVISOR HUGO
MERCADO,

Defendants.

NO. CV-08-2550-EFS

**ORDER REQUIRING PLAINTIFF TO
FILE AN AMENDED COMPLAINT**

Before the Court is *pro se* Plaintiff Alan Beckham's Complaint, which alleges constitutional violations under 42 U.S.C. § 1983 (Ct. Rec. 1), and related Application to Proceed In Forma Pauperis (Ct. Rec. 2). Under the Prisoner Litigation Reform Act of 1995, the Court is required to screen prisoner complaints seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Claims that are legally frivolous or malicious, claims that fail to state a claim upon which relief may be granted, and claims that seek monetary relief from a defendant who is immune from such relief are properly dismissed. *Id.* §§ 1915A(b)(1), (2) & 1915(e)(2). After review, the Court finds an amended complaint is required. The reasons for the Court's Order are set forth below.

ORDER * 1

1 Plaintiff alleges that Stockton Parole Officer Hugo Mercado and
2 Agent Bell violated his Fourteenth Amendment Equal Protection rights by
3 harassing and unlawfully arresting him in December 2007.
4 (Ct. Recs. 1 & 4.)

5 Section 1983 creates a cause of action for the "deprivation of any
6 rights, privileges, or immunities secured by the Constitution and the
7 law" of the United States. Establishing a section 1983 claim requires
8 a plaintiff to show: 1) that a right secured by the Constitution or laws
9 of the United States was violated, and 2) that the alleged violation was
10 committed by a person acting under the color of State law. *Long v.*
11 *County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). "A person
12 deprives another of a constitutional right, within the meaning of section
13 1983, if he does an affirmative act, participates in another's
14 affirmative acts, or omits to perform an act which he is legally required
15 to do that causes the deprivation of which the plaintiff complains."
16 *Redman v. County of San Diego*, 942 F.2d 1435, 1439 (9th Cir. 1991)
17 (internal quotations and brackets omitted) (citation omitted).

18 A plaintiff's section 1983 complaint must set forth specific facts
19 demonstrating how the named defendants caused or personally participated
20 in depriving the plaintiff of his or her protected rights. See *Arnold*
21 *v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981); *Taylor v. List*, 880 F.2d
22 1040, 1045 (9th Cir. 1989). It is important to remember, however, that
23 *pro se* plaintiffs are held "to less stringent standards than formal
24 pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 519-20
25 (1972). Courts must construe pleadings liberally and afford *pro se*

1 plaintiffs any benefit of the doubt. *Jackson v. Carey*, 353 F.3d 750, 757
2 (9th Cir. 2003).

3 Plaintiff's complaint turns on an alleged Fourteenth Amendment Equal
4 Protection violation. The Fourteenth Amendment provides that "no state
5 shall make or enforce any law which shall . . . deny to any person within
6 its jurisdiction the equal protection of the laws." U.S. CONST. amend.
7 XIV, § 1. This clause directs that "all persons similarly situated shall
8 be treated alike." *Caswell v. Calderon*, 363 F.3d 832, 837 (9th Cir.
9 2004).

10 Here, even viewing Plaintiff's complaint liberally, it fails to set
11 forth cognizable section 1983 claims against the named Defendants. The
12 Court notes three (3) problems with Plaintiff's complaint.

13 First, Plaintiff alleges that Defendants Bell and Mercado violated
14 his Fourteenth Amendment rights, but he does not specify whether he is
15 suing Defendants in their "individual" or "official" capacities. If
16 Plaintiff seeks recovery from Defendants' personal finances, he needs to
17 articulate in the caption that he is suing Defendants in their
18 "individual capacities," see *Hafer v. Malo*, 502 U.S. 21, 25 (1991); if
19 Plaintiff seeks recovery from the entity employing Defendants (e.g., City
20 of Stockton), he needs to articulate in the caption that he is suing
21 Defendants in their "official capacities." See *Kentucky v. Graham*, 473
22 U.S. 159, 166 (1985) (recognizing that claims against an officer in
23 official capacity is "another way of pleading an action against an entity
24 of which an officer is an agent").

25 Second, while Plaintiff is permitted to sue the entity employing
26 Defendants, this entity cannot be liable under section 1983 solely

1 because it hired employees who became constitutional wrongdoers. *Monell*
2 *v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Therefore, the entity
3 employing Defendants is subject to section 1983 liability only if
4 Plaintiff's alleged constitutional violation can be attributed to the
5 enforcement of a municipal policy, practice, or decision of a final
6 municipal policy maker. *Id.* at 694. Here, Plaintiff's complaint does
7 not identify any such policy, practice, or decision.

8 Third, Plaintiff needs to identify how Defendants specifically
9 violated his constitutionally protected rights. Because this is an
10 alleged Equal Protection violation, Plaintiff must articulate what
11 classification or categorization he is similarly-situated to (e.g., race,
12 alienage, travel, freedom of association) and how he was treated
13 differently from this classification or categorization.

14 In sum, Plaintiff's complaint is deficient. When deficiencies in
15 the complaint exist, a *pro se* litigant must be given an opportunity to
16 amend his complaint unless it is absolutely clear that the deficiencies
17 could not be cured by amendment. *See Lopez v. Smith*, 203 F.3d 1122, 1128
18 (9th Cir. 2000) (en banc). Accordingly, Plaintiff may submit an amended
19 complaint within **sixty (60) days** of the date of this Order. The amended
20 complaint shall:

- 21 1. be legibly rewritten or retyped in its entirety;
- 22 2. be an original and not a copy and may not incorporate any part
23 of the original complaint by reference;
- 24 3. be a single document;
- 25 4. be clearly labeled "First Amended Complaint" and cause number
26 CV-08-2550-EFS must be written in the caption. The first

1 amended complaint will operate as a complete substitute for -
2 rather than a supplement to - the present complaint;

3 5. contain a section titled: **Parties**. This section shall identify
4 all the defendants who caused Plaintiff's alleged
5 constitutional deprivation. Plaintiff shall identify whether
6 he is suing Defendants in their "individual" capacity,
7 "official" capacity, or both;

8 6. contain a section titled: **Facts**. This section shall set forth
9 the facts that comprise Plaintiff's cause of action, i.e.,
10 identify what each individual Defendant did with specificity
11 and when. Each factual allegation shall be set forth in
12 separate, numbered paragraphs;

13 7. contain a section titled: **Claims**. This section shall set forth
14 the claims showing that Plaintiff is entitled to relief, i.e.,
15 identify **how** Defendants allegedly violated his Fourteenth
16 Amendment Equal Protection rights. If Plaintiff intends to
17 pursue an "official" capacity claim against the entity
18 employing Defendants, then he shall allege what policy,
19 practice, or decision violated his Fourteenth Amendment Equal
20 Protection rights; and

21 8. contain a section titled: **Prayer for Relief**. This section
22 shall set forth what relief Plaintiff seeks.

23 Plaintiff's first amended complaint must also comply with both the
24 Federal Rules of Civil Procedure and the Local Rules for the Eastern
25 District of California. See *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.
26 1987) (finding that *pro se* litigants must follow the same rules of

1 procedure that govern other litigants). As a courtesy, the Clerk's
2 Office will send Plaintiff a copy of the Local Rules.

3 **Plaintiff is cautioned that if he fails to amend within sixty (60)**
4 **days as directed, the Court will dismiss the complaint for failure to**
5 **state a claim under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).** Pursuant
6 to 28 U.S.C. § 1915(g), a prisoner who brings three (3) or more civil
7 actions or appeals that are dismissed because they are legally frivolous,
8 malicious, or fail to state a claim, will be precluded from bringing any
9 other civil action or appeal *in forma pauperis* "unless the prisoner is
10 under imminent danger of serious physical injury."

11 If Plaintiff chooses to amend his complaint, and the Court finds the
12 amended complaint is frivolous, malicious, or fails to state a claim, the
13 amended complaint will be dismissed pursuant to 28 U.S.C. §§ 1915A(b)(1)
14 and 1915(e)(2). Such a dismissal would count as one of the dismissals
15 under 28 U.S.C. § 1915(g).

16 Alternatively, the Court will permit Plaintiff to voluntarily
17 dismiss his Complaint pursuant to Rule 41(a), Federal Rules of Civil
18 Procedure. Plaintiff may submit the attached Motion to Voluntarily
19 Dismiss the Complaint within **sixty (60) days** of the date of this Order
20 or risk dismissal under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2), and a
21 "strike" under 28 U.S.C. § 1915(g). A voluntary dismissal within this
22 sixty-day period will not count as a strike.

23 Plaintiff is still obligated to pay the full filing fee of \$350.00.
24 However, if Plaintiff elects to take a voluntary dismissal within the
25 sixty-day period, Plaintiff may simultaneously file a separate Affidavit
26 and Motion to waive collection of the remaining balance of the filing fee

1 in this action. The Court will grant such a motion only for good cause
2 shown. In no event will prior partial payments be refunded to Plaintiff.

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter
4 this Order and forward a copy to Plaintiff, along with a form Motion to
5 Voluntarily Dismiss Complaint, a civil rights complaint form, and a copy
6 of the Local Rules for the Eastern District of California.

7 **DATED** this 8th day of January 2009.

8
9 S/ Edward F. Shea

EDWARD F. SHEA

United States District Judge

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID BECKHAM,

Plaintiff,

v.

AGENT BELL and STOCKTON
PAROLE SUPERVISOR HUGO
MERCADO,

Defendants.

NO. CV-08-2550-EFS

MOTION TO VOLUNTARILY DISMISS
COMPLAINT

Plaintiff David Beckham requests that the Court grant his Motion to Voluntarily Dismiss the Complaint pursuant to Federal Rule of Civil Procedure 41(a). Plaintiff is proceeding *pro se*; Defendants have not been served in this action.

DATED this _____ day of _____ 2009.

DAVID BECKHAM