

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ROGER CLARK,

No. CIV S-09-1948-JAM-CMK

Plaintiff,

vs.

ORDER

ROLLING HILLS CASINO, et al.,

Defendants.

_____ /

Plaintiff, proceeding in pro per, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint (Doc. 5).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). Moreover, pursuant to Federal Rule of Civil Procedure 12(h), this court must dismiss an action “[w]henver it appears . . . that the court lacks jurisdiction of the subject matter

1” Because plaintiff, who is not a prisoner, has been granted leave to proceed in forma
2 pauperis, the court will screen the complaint pursuant to § 1915(e)(2).

3 Plaintiff’s original complaint was found deficient in that he failed to state a claim
4 for upon which relief could be granted against Rolling Hills Casino, the City of Corning, the
5 Corning Police Department, the County of Tehama, and the Tehama County Sheriff. The
6 undersigned found the original complaint sufficient to state a claim against the Doe peace
7 officers, but informed Plaintiff that without the identity of the peace officers, service is unlikely
8 to be accomplished. Plaintiff was then provided an opportunity to file an amended complaint,
9 which he has now done.

10 In his amended complaint, Plaintiff identifies two of the individual officers
11 involved in the altercation he complains about. The officers are identified as officers Bennett
12 and Benson. In addition, he includes state law claims against the Rolling Hills Casino, Eric
13 Felix, and Jon Pada.¹ As stated in the prior court order, Plaintiff’s complaint states sufficient
14 facts to state a claim against defendants Bennett and Benson. The court will therefore authorize
15 service against these defendants.

16 The court concludes that it has subject matter jurisdiction and that the complaint is
17 appropriate for service by the United States Marshal without pre-payment of costs. If plaintiff
18 desires service of process by the United States Marshal without pre-payment of costs, plaintiff
19 must comply with the requirements outlined below. Plaintiff is warned that failure to comply
20 with this order, or otherwise effect service pursuant to Federal Rule of Civil Procedure 4, may
21 result in dismissal of the action for lack of prosecution and failure to comply with court rules and
22 orders. See Local Rule 110.

23 Accordingly, IT IS HEREBY ORDERED that:

- 24 1. The Clerk of the Court shall issue a summons in a civil case, the

25 _____
26 ¹ As these are state law claims, for which this court has pendent jurisdiction, the
screening of these claims is not mandatory.

1 undersigned's new case documents, and an order setting this matter for an initial scheduling
2 conference;

3 2. The Clerk of the Court shall send plaintiff the summons, five USM-285
4 forms, and a copy of the complaint;

5 3. Within 15 days from the date of this order, plaintiff shall complete the
6 summons by indicating the addresses of the named defendants and shall submit to the United
7 States Marshal at the address indicated below the following documents:

- 8 a. The completed summons;
- 9 b. One completed USM-285 form for each named defendant;
- 10 c. Six copies of the complaint; and
- 11 d. Five copies of the court's initial scheduling conference order
12 issued herewith;

13 4. Within 20 days of the date of this order, plaintiff shall file a notice
14 indicating that the documents described above have been submitted to the United States Marshal;

15 5. The United States Marshal is directed to serve all process without pre-
16 payment of costs not later than 60 days from the date of this order, such service of process to be
17 completed by serving a copy of the summons, complaint, and initial scheduling conference order
18 on the defendants at the addresses provided by plaintiff; and

19 6. The Clerk of the Court is directed to serve a copy of this order on the
20 United States Marshal at 501 "I" Street, Sacramento, CA, 95814.

21
22 DATED: October 29, 2010

23 
24 **CRAIG M. KELLISON**
25 UNITED STATES MAGISTRATE JUDGE
26