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

ROGER P. SNITCHFIELD,

No. CIV S-10-3243-LKK-CMK

Plaintiff,

vs.

ORDER

RED BLUFF POLICE DEPT., et al.,

Defendants.

_____ /

Plaintiff, who is proceeding pro se, brings this civil action. Pending before the court is plaintiff’s complaint (Doc. 1). 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]henever it appears . . . that the court lacks

1 jurisdiction of the subject matter” Because plaintiff, who is not a prisoner, has been granted
2 leave to proceed in forma pauperis, the court will screen the complaint pursuant to § 1915(e)(2).
3 Pursuant to Rule 12(h), the court will also consider as a threshold matter whether it has subject-
4 matter jurisdiction.

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6 **I. PLAINTIFF’S ALLEGATIONS**

7 Plaintiff alleges as follows:

8 1. I allege that police were keeping me under daily surveillance
9 because they assumed that at a prior time (Sept. 2008) I ignored subpoena
10 to appear at the arraignment and trial of a person who attempted to stab me
11 in the dark in Red Bluff (July 2008). I was in Trinity County on a camping
12 trip at the time the subpoena was issued and I did not receive it until after
13 it had expired.

14 2. I allege that police in Red Bluff deliberately entrapped me in an
15 intersection to make it appear that I committed a violation (April 28,
16 2009).

17 3. I allege that I was not allowed to enter a plea of not guilty by
18 Tehama Superior Court because I did not pay a fine in advance of \$380.
19 Several months later the fine was increased to \$648 and my license to
20 drive was finally suspended on June 3, 2009, by DMV and continues to be
21 suspended after a year and a half. I am now enduring much hardship due
22 to inability to drive my car because of an illegal citation. I had a perfect
23 driving record of 21 years before I was cited on the very same day that I
24 returned to Red Bluff after an absence of three weeks.

25 Plaintiff names as defendants the Red Bluff Police Department and the Tehama County Superior
26 Court. Plaintiff seeks money damages as well as an order “for Tehama Court and/or the
California Department of motor Vehicles to restore my Driver License without penalty, as soon
as possible.”

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1 **II. DISCUSSION**

2 Plaintiff's complaint suffers from the following defects, which will be discussed
3 in more detail below: (1) the complaint does not name any of the individuals alleged to have
4 violated his rights with respect to plaintiff's subpoena and entrapment claims; (2) plaintiff has
5 not alleged sufficient facts to establish municipal liability on the part of defendant Red Bluff
6 Police Department; (3) this court lacks jurisdiction and must abstain from entertaining plaintiff's
7 claim regarding imposition of a traffic fine and suspension of his drivers license; and (4) this
8 court lacks jurisdiction to enter an order (i.e., writ of mandamus) directing state officials to act as
9 plaintiff requests.

10 **A. Failure to Name Individuals**

11 To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual
12 connection or link between the actions of individuals and the alleged deprivations. See Monell v.
13 Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person
14 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he
15 does an affirmative act, participates in another's affirmative acts, or omits to perform an act
16 which he is legally required to do that causes the deprivation of which complaint is made."
17 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations
18 concerning the involvement of official personnel in civil rights violations are not sufficient. See
19 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth
20 specific facts as to each individual's causal role in the alleged constitutional deprivation.
21 See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). In this case, to the extent plaintiff
22 alleges liability of unnamed "police," plaintiff's claim is inadequate because he does not actually
23 name any individual officers who are alleged to have violated his rights. Plaintiff will be
24 provided an opportunity to file an amended complaint to name individual defendants and state
25 how each such defendant caused or contributed to a constitutional violation.

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1 **B. Municipal Liability**

2 Plaintiff names the Red Bluff Police Department as a defendant to this action.
3 Municipalities and other local government units are among those “persons” to whom § 1983
4 liability applies. See Monell v. Dep’t of Soc. Servs., 436 U.S. 658, 690 (1978). Counties and
5 municipal government officials are also “persons” for purposes of § 1983. See id. at 691; see
6 also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local
7 government unit, however, may not be held responsible for the acts of its employees or officials
8 under a respondeat superior theory of liability. See Bd. of County Comm’rs v. Brown, 520 U.S.
9 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not
10 of the actions of its employees or officers. See id. To assert municipal liability, therefore, the
11 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or
12 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to
13 withstand dismissal even if it is based on nothing more than bare allegations that an individual
14 defendant’s conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los
15 Angeles Police Dep’t, 839 F.2d 621, 624 (9th Cir. 1988). In this case, plaintiff’s complaint is
16 devoid of any of the necessary allegations to establish municipal liability. Plaintiff will be
17 provided an opportunity to amend.

18 **C. Abstention**

19 Here, plaintiff challenges a state court conviction for a traffic violation. Under the
20 Rooker-Feldman abstention doctrine, federal courts lack jurisdiction to hear matters already
21 decided in state court. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of
22 Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine applies in cases
23 “brought by state court losers complaining of injuries caused by state court judgments rendered
24 before the district court proceedings commenced and inviting district court review and rejection
25 of those judgments.” Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280 (2005).
26 An exception, inapplicable here, would be where Congress expressly grants federal courts

1 jurisdiction to review state court judgment (such as habeas corpus, for example).¹ The court
2 finds that this defect is not curable. Plaintiff may not proceed on any claims relating to the traffic
3 violation.

4 **D. Mandamus**

5 Plaintiff seeks an order from this court directing state officials to restore his
6 driver's license without penalty. In essence, plaintiff seeks a writ of mandamus. Under 28
7 U.S.C. § 1651(a), all federal courts may issue writs "in aid of their respective jurisdictions. . ."
8 In addition, the district court has original jurisdiction under 28 U.S.C. § 1361 to issue writs of
9 mandamus. That jurisdiction is limited, however, to writs of mandamus to "compel an officer or
10 employee of the United States or any agency thereof to perform a duty. . ." 28 U.S.C. § 1361
11 (emphasis added). It is also well-established that, with very few exceptions specifically outlined
12 by Congress, the federal court cannot issue a writ of mandamus commanding action by a state or
13 its agencies. See e.g. Demos v. U.S. Dist. Court for Eastern Dist. of Wash., 925 F.2d 1160 (9th
14 Cir. 1991). Where the federal court does have jurisdiction to consider a petition for a writ of
15 mandamus, such a writ may not issue unless it is to enforce an established right by compelling
16 the performance of a corresponding non-discretionary ministerial act. See Finley v. Chandler,
17 377 F.2d 548 (9th Cir. 1967). This defect is not curable.

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24 ¹ To the extent plaintiff would have this court treat the action as a federal habeas
25 petition attacking the state court traffic conviction, the court cannot oblige. If a § 1983 complaint
26 states claims which sound in habeas, the court should not convert the complaint into a habeas
petition. See Blueford v. Prunty, 108 F.3d 251, 255 (9th Cir. 1997).

1 **III. CONCLUSION**

2 Because it is possible that some of the deficiencies identified in this order may be
3 cured by amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the
4 entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

5 Plaintiff is informed that, as a general rule, an amended complaint supersedes the original
6 complaint. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following
7 dismissal with leave to amend, all claims alleged in the original complaint which are not alleged
8 in the amended complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987).

9 Therefore, if plaintiff amends the complaint, the court cannot refer to the prior pleading in order
10 to make plaintiff's amended complaint complete. See Local Rule 220. An amended complaint
11 must be complete in itself without reference to any prior pleading. See id.

12 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
13 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
14 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
15 each named defendant is involved, and must set forth some affirmative link or connection
16 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
17 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 Because some of the defects identified in this order cannot be cured by
19 amendment, plaintiff is not entitled to leave to amend as to such claims. Plaintiff, therefore, now
20 has the following choices: (1) plaintiff may file an amended complaint which does not allege the
21 claims identified herein as incurable, in which case such claims will be deemed abandoned and
22 the court will address the remaining claims; or (2) plaintiff may file an amended complaint which
23 continues to allege claims identified as incurable, in which case the court will issue findings and
24 recommendations that such claims be dismissed from this action, as well as such other orders
25 and/or findings and recommendations as may be necessary to address the remaining claims.

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1 Finally, plaintiff is warned that failure to file an amended complaint within the
2 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
3 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
4 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
5 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's complaint is dismissed with leave to amend; and
- 8 2. Plaintiff shall file an amended complaint within 30 days of the date of
9 service of this order.

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11 DATED: December 13, 2010

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13 **CRAIG M. KELLISON**
14 UNITED STATES MAGISTRATE JUDGE
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