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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DENNIS GARDNER,
Plaintiff,
v.
JASON BAUER,
Defendant.

No. 2:14-cv-2908-KJM-KJN PS

ORDER

Plaintiff Dennis Gardner, who proceeds in this action without counsel, has requested leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (ECF No. 2.)¹ Plaintiff's application in support of his request to proceed *in forma pauperis* makes the showing required by 28 U.S.C. § 1915. Accordingly, the court grants plaintiff's request to proceed *in forma pauperis*.

The determination that a plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any time if it determines that the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant.

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¹ This case proceeds before the undersigned pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 In this case, plaintiff alleges that, on August 11, 2014, he was arrested by defendant Jason
2 Bauer, a City of Vallejo police officer, for being “in violation of probation of a court protective
3 order when in fact probation was terminated...” (ECF No. 1 at 3.) Consequently, plaintiff
4 purportedly spent 29 days in detention until the District Attorney moved to dismiss the violation
5 in the interest of justice. (*Id.*) The complaint merely states that plaintiff seeks damages under
6 California state and federal law. (*Id.*) However, liberally construed, plaintiff appears to assert a
7 42 U.S.C. § 1983 claim for unlawful detention in violation of the Fourth Amendment, as well as
8 other potential state law tort claims.

9 Based on the limited record before the court, the court cannot conclude that plaintiff’s
10 action is frivolous, that the complaint fails to state claims on which relief can be granted, or that
11 plaintiff seeks monetary relief from an immune defendant.² The court reserves decision as to
12 plaintiff’s claims until the record is sufficiently developed, and this order does not preclude
13 defendant from challenging plaintiff’s complaint through a timely motion pursuant to Federal
14 Rule of Civil Procedure 12 or other appropriate method of challenging plaintiff’s pleading.
15 Accordingly, the court orders service of the complaint on defendant.

16 For the foregoing reasons, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff’s motion to proceed *in forma pauperis* (ECF No. 2) is granted.
- 18 2. Service of the complaint is appropriate for defendant and City of Vallejo police
19 officer Jason Bauer.
- 20 3. The Clerk of Court is directed to issue forthwith all process pursuant to Federal
21 Rule of Civil Procedure 4.
- 22 4. The Clerk of Court shall send plaintiff one USM-285 form, one summons, this
23 court’s scheduling order, and the forms providing notice of the magistrate judge’s availability to
24 exercise jurisdiction for all purposes.

25 _____
26 ² Plaintiff attached to his complaint a police report, which indicates that defendant apparently
27 confirmed the validity of the protective order with dispatch at the time of the incident. While
28 defendant, among other defenses, may potentially raise a defense of qualified immunity in an
appropriate motion, the court at this juncture declines to evaluate, and does not pre-judge, the
issue of potential qualified immunity based on the limited record before it.

