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8	UNITED STATES DISTRICT COURT	
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	DENNIS GARDNER,	No. 2:14-cv-2908-KJM-KJN PS
12	Plaintiff,	
13	V.	<u>ORDER</u>
14	JASON BAUER,	
15	Defendant.	
16		
17	Plaintiff Dennis Gardner, who procee	ds in this action without counsel, has requested leave
18	to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. (ECF No. 2.) ¹ Plaintiff's application	
19	in support of his request to proceed in forma pauperis makes the showing required by 28 U.S.C. §	
20	1915. Accordingly, the court grants plaintiff's request to proceed in forma pauperis.	
21	The determination that a plaintiff may proceed in forma pauperis does not complete the	
22	required inquiry. Pursuant to 28 U.S.C. § 1915, the court is directed to dismiss the case at any	
23	time if it determines that the allegation of poverty is untrue, or if the action is frivolous or	
24	malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against	
25	an immune defendant.	
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27 28	¹ This case proceeds before the undersigned $p $ § 636(b)(1).	pursuant to E.D. Cal. L.R. 302(c)(21) and 28 U.S.C.

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 plaintiff seeks monetary relief from an immune defendant.² The court reserves decision as to 11 plaintiff's claims until the record is sufficiently developed, and this order does not preclude 12 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. 2. 18 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 ² Plaintiff attached to his complaint a police report, which indicates that defendant apparently 26 confirmed the validity of the protective order with dispatch at the time of the incident. While defendant, among other defenses, may potentially raise a defense of qualified immunity in an 27 appropriate motion, the court at this juncture declines to evaluate, and does not pre-judge, the 28 issue of potential qualified immunity based on the limited record before it. 2

1	5. Plaintiff is advised that to effectuate service, the U.S. Marshal will require:	
2	a. One completed summons;	
3	b. One completed USM-285 form for each defendant to be served;	
4	c. A copy of the complaint for each defendant to be served, with an extra	
5	copy for the U.S. Marshal; and	
6	d. A copy of this court's scheduling order and related documents for each	
7	defendant to be served.	
8	6. Plaintiff shall supply the U.S. Marshal, within 30 days from the date this order is	
9	filed, with all information needed by the U.S. Marshal to effectuate service of process, and shall,	
10	within 10 days thereafter, file a statement with the court that such documents have been submitted	
11	to the U.S. Marshal.	
12	7. The U.S. Marshal shall serve process, with copies of this court's scheduling order	
13	and related documents, within 90 days of receipt of the required information from plaintiff,	
14	without prepayment of costs. If the U.S. Marshal is unable, for any reason, to effectuate service	
15	of process on any defendant, the U.S. Marshal shall promptly report that fact, and the reasons for	
16	it, to the court.	
17	8. If a defendant waives service, the defendant is required to return the signed waiver	
18	to the U.S. Marshal. The filing of an answer or a responsive motion does not relieve a defendant	
19	of this requirement, and the failure to return the signed waiver may subject a defendant to an	
20	order to pay the costs of service by the U.S. Marshal.	
21	9. The Clerk of Court shall serve a copy of this order on the U.S. Marshal.	
22	10. Plaintiff's failure to comply with this order may result in any appropriate	
23	sanctions, including monetary sanctions and/or a recommendation that this action be dismissed	
24	pursuant to Federal Rule of Civil Procedure 41(b).	
25	IT IS SO ORDERED.	
26	Dated: December 18, 2014 Kerdull J. Newman	
27	KENDALL J. NEWMAN UNITED STATES MAGISTRATE JUDGE	
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