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

ANTHONY PAUL MAXWELL,
Plaintiff,
v.
RYON MITCHELL, et al.,
Defendants.

No. 2:15-CV-0015-JAM-DMC-P

FINDINGS AND RECOMMENDATIONS

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s First Amended Complaint (Doc. 19).

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 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. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege
2 with at least some degree of particularity overt acts by specific defendants which support the
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
4 impossible for the court to conduct the screening required by law when the allegations are vague
5 and conclusory.

6 7 **I. PLAINTIFF'S ALLEGATIONS**

8 Plaintiff names the following as defendants: (1) Ryon Mitchell, a police officer
9 with the City of Chico; (2) Kevin Hass, also a City of Chico police officer; (3) Ford Porter, a City
10 of Chico police captain; (4) Kirk Trostle, the Chief of Police for the City of Chico; (5) the City of
11 Chico Police Department; (6) the City of Chico; (7) Jeff Greeson, a deputy district attorney for
12 the County of Butte; (8) the County of Butte; and (9) the Butte County Superior Court.

13 Plaintiff alleges that on May 8, 2013 he was stabbed. After driving himself to the hospital,
14 Plaintiff left his vehicle unattended outside the hospital. Defendant Officer Mitchell was asked to
15 move plaintiff's car. After retrieving the keys from plaintiff, Officer Mitchell noticed a small
16 metal canister attached to the key ring. Plaintiff contends that Officer Mitchell unscrewed the
17 canister and found what the officer believed to be a small amount of marijuana. Plaintiff states
18 that the officer told him that he was confiscating the marijuana but that plaintiff would not be
19 charged.

20 Next, plaintiff alleges that Officer Mitchell falsified a police report to indicate that
21 the marijuana had originally be found by medical staff during an inventory of plaintiff's property
22 and that it had been turned over to Mitchell for investigation. While an arrest warrant was issued,
23 plaintiff states that it was later recalled and any charges against him resulting from the controlled
24 substance possession were dismissed at a preliminary hearing held on August 7, 2013. Plaintiff
25 alleges that defendant Captain Porter disregarded plaintiff's citizens complaint and "downgraded"
26 it "so it would not appear in Mitchell's personnel file. . . ." According to plaintiff, defendant City
27 of Chico Police Department "has a habit, practice, and/or custom of protecting and sanitizing the
28 illegal activities of their police officers, and disregarding citizens' complaints." Plaintiff adds that

1 defendants Chief of Police Trostle, City of Chico, and City of Chico Police Department are
2 responsible for allowing this practice to continue and are “completely indifferent through habit or
3 custom. . . .” regarding violations by police officers and covering them up.

4 Plaintiff next claims that defendant Butte County Superior Court and defendant
5 deputy district attorney Greeson violated his constitutional rights by releasing him on his own
6 recognizance in exchange for a waiver of Fourth Amendment rights. Plaintiff claims that
7 defendant Butte County is indifferent to this practice.

8 Plaintiffs’ Amended Complaint charges that defendant officer Hass arrested him
9 on the recalled warrant knowing that it was not valid at the time of the arrest. Plaintiff further
10 alleges that he was injured by officer Hass during the course of the arrest. Plaintiff also claims
11 that defendant City of Chico Police Department has a policy of not requiring officers to check the
12 validity of warrants prior to executing them. According to plaintiff, defendant Chief Trostle has a
13 custom of allowing his officers to engage in “free style” policing. Plaintiff contends that
14 defendant City of Chico is completely indifferent to these policies and practices.

15 16 **II. DISCUSSION**

17 The court finds that the complaint appears to state a claim for relief as against
18 defendants Mitchell, Hass, Porter, Trostle, the City of Chico Police Department, and the City of
19 Chico. By separate order, the court will direct plaintiff to submit documents necessary for service
20 on these defendants.

21 The complaint, however, does not state cognizable claims against Jeff Greeson, a
22 deputy district attorney for the County of Butte, the County of Butte, or the Butte County
23 Superior Court based on plaintiff’s allegation that he was released on his own recognizance in
24 exchange for a waiver of Fourth Amendment rights. In particular, any loss of plaintiff’s rights
25 resulted from plaintiff’s decision to accept such an agreement and not from the conduct of these
26 defendants. Plaintiff was free to refuse to waive Fourth Amendment claims and post bond or
27 remain in custody. He chose not to do so.

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Based on the foregoing, the undersigned recommends that Greeson, County of Butte, and Butte County Superior Court be dismissed as defendants to this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with these findings and recommendations, any party may file written objections with the court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: September 13, 2018



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE