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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA N. HARRELL,

Plaintiff,

v.

WAL-MART, et al.,

Defendants.

No. 2:15-cv-0576 AC

ORDER and FINDINGS AND  
RECOMMENDATIONS

Plaintiff is proceeding in this action pro se and in forma pauperis. This proceeding was referred to this court by E.D. Cal. R. (“Local Rule”) 302(c)(21).<sup>1</sup> On May 5, 2015, the undersigned dismissed the original complaint as to all defendants except for officer Michelle Belyea. ECF No. 8. Plaintiff was given the choice of proceeding against Belyea alone, or amending his complaint to attempt to state a claim against the other defendants. Id. Plaintiff timely elected to amend his complaint, rather than to proceed only against Belyea. See ECF No. 15 (First Amended Complaint).

Because three of the defendants should now be dismissed without leave to amend, these findings and recommendations are submitted to the district judge presiding over this case.

<sup>1</sup> Although plaintiff indicates that he is in custody, this matter is proceeding under the authority of Local Rule 302(c)(21), rather than Local Rule 302(c)(17), because plaintiff does not seek habeas relief, nor does he challenge the conditions of his confinement.

1 I. SCREENING STANDARD

2 The federal in forma pauperis statute authorizes federal courts to dismiss a case at any  
3 time, if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may  
4 be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C.  
5 § 1915(e)(2).

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
8 court will (1) accept as true all of the factual allegations contained in the complaint, unless they  
9 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
10 plaintiff, and (3) resolve all doubts in the plaintiffs’ favor. See Neitzke, 490 U.S. at 327;  
11 Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art at  
12 Pasadena, 592 F.3d 954, 960 (9th Cir. 2010); Hebbe v. Pliler, 627 F.3d 338, 340 (9th Cir. 2010).

13 However, the court need not accept as true, legal conclusions cast in the form of factual  
14 allegations, or allegations that contradict matters properly subject to judicial notice. See Western  
15 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Sprewell v. Golden State Warriors,  
16 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001).

17 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.  
18 Haines v. Kerner, 404 U.S. 519, 520 (1972). Pro se complaints are construed liberally and may  
19 only be dismissed if it appears beyond doubt that the plaintiff can prove no set of facts in support  
20 of his claim which would entitle him to relief. Nordstrom v. Ryan, 762 F.3d 903, 908 (9th Cir.  
21 2014). A pro se litigant is entitled to notice of the deficiencies in the complaint and an  
22 opportunity to amend, unless the complaint’s deficiencies could not be cured by amendment. See  
23 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

24 II. THE COMPLAINT

25 The First Amended Complaint (“complaint”) is asserted against Belyea, Rashad Figaro,  
26 “Garrison,” and Solano County Superior Court Judge Robert Bowers. Complaint ¶ III(A), (B).  
27 The description that follows assumes the truth of the complaint, solely for purposes of this  
28 screening. On April 16, 2014, two Wal-Mart employees, defendants Figaro and Garrison,

1 detained plaintiff, falsely claiming that plaintiff was stealing a pair of pants. Complaint ¶ IV  
2 at 9-10. The Fairfield Police Department was called, and defendant officer Belyea arrested  
3 plaintiff for second degree commercial burglary. Id. at 10. In connection with this arrest, Belyea  
4 filed a “false police report” stating that plaintiff had “confessed” to stealing the pants; plaintiff  
5 had made no such confession. Id. Plaintiff was taken before Judge Bowers for a probable cause  
6 hearing. Id. at 11. Judge Bowers held plaintiff to answer for the charge based upon no evidence  
7 other than Belyea’s false testimony. Id. Plaintiff spent 300 days in Solano County Jail until the  
8 charges were dismissed. Id. Plaintiff sues for malicious prosecution, false arrest and false  
9 imprisonment.

### 10 III. LEGAL CLAIMS

11 Plaintiff asserts that his complaint seeks to hold defendants liable for violations of his  
12 rights under the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution. ECF No. 15  
13 at 2. The complaint alleges facts indicating the potential presence of the following Section 1983  
14 constitutional claims against the government defendants: a Fourth Amendment unreasonable  
15 seizure claim based upon false arrest; a Fourteenth Amendment Due Process claim based upon  
16 false imprisonment; and a Fourteenth Amendment Due Process claim based upon malicious  
17 prosecution.

#### 18 A. Section 1983

19 A plaintiff may bring an action under 42 U.S.C. § 1983 to redress  
20 violations of his “rights, privileges, or immunities secured by the  
21 Constitution and [federal] laws” by a person or entity, including a  
municipality, acting under the color of state law.

22 Awabdy v. City of Adelanto, 368 F.3d 1062, 1066 (9th Cir. 2004) (citing Monell v. Dep't of  
23 Social Servs., 436 U.S. 658, 690-95 (1978)). “To state a claim under § 1983, a plaintiff must  
24 allege two essential elements: (1) that a right secured by the Constitution or laws of the United  
25 States was violated, and (2) that the alleged violation was committed by a person acting under the  
26 color of State law.” Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

27 The complaint alleges that plaintiff was “detained” by the Wal-Mart employees, Figaro  
28 and Garrison. Complaint ¶ IV at p.3. However, there is no allegation showing that they acted

1 under color of state law. “Under color of state law” means with the authority of the state, such as  
2 a public employee acting in his or her official capacity. See West v. Atkins, 487 U.S. 42, 48  
3 (1988). Accordingly, the complaint fails to state a Section 1983 claim against Figaro and  
4 Garrison. Plaintiff has simply re-alleged his claims against these defendants, even though the  
5 claims against them were previously dismissed for failure to allege conduct under color of State  
6 law. See ECF No. 8. The claim against these defendants should be dismissed without further  
7 leave to amend.

8 B. Unreasonable Search & Seizure: False Arrest

9 “A claim for unlawful arrest is cognizable under § 1983 as a violation of the Fourth  
10 Amendment, provided the arrest was without probable cause or other justification.” Lacey v.  
11 Maricopa Cnty., 693 F.3d 896, 918 (9th Cir. 2012) (en banc) (citation and internal quotation  
12 marks omitted); Maxwell v. County of San Diego, 708 F.3d 1075, 1085 (9th Cir. 2013) (an arrest  
13 “without probable cause” is “an unreasonable seizure”).

14 The complaint alleges that defendant Belyea arrested plaintiff even though there was no  
15 evidence to support probable cause for the arrest, and further alleges that Belyea filed a false  
16 arrest report claiming that plaintiff had confessed. Taken as true, these allegations are sufficient  
17 for screening purposes to support a claim that plaintiff was arrested without probable cause in  
18 violation of the Fourth Amendment. See Maxwell, 708 F.3d at 1085-86 (“[p]robable cause exists  
19 if the arresting officers ‘had knowledge and reasonably trustworthy information of facts and  
20 circumstances sufficient to lead a prudent person to believe that [the arrestee] had committed or  
21 was committing a crime’”) (quoting United States v. Ricardo D., 912 F.2d 337, 342 (9th  
22 Cir. 1990)).

23 C. Due Process: False Imprisonment

24 By virtue of its “incorporation” into the Fourteenth Amendment,  
25 the Fourth Amendment requires the States to provide a fair and  
26 reliable determination of probable cause as a condition for any  
27 significant pretrial restraint of liberty. The probable-cause  
28 determination “must be made by a judicial officer either before or  
promptly after arrest.”

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1 Baker v. McCollan, 443 U.S. 137, 142-43 (1979) (quoting Gerstein v. Pugh, 420 U.S. 103 (1975))  
2 (citation omitted).

3 The complaint alleges that after a probable cause hearing, Judge Bowers remanded  
4 plaintiff to the Solano County Jail for 300 days before the charges against him were dismissed.  
5 The complaint further alleges, as discussed above, that there was no probable cause for plaintiff's  
6 detention, as the only evidence against him was Belyea's false testimony. The complaint alleges  
7 that Judge Bowers showed "a great amount of Deliberate Indifference" to plaintiff in remanding  
8 him to jail.

9 "It is well established that state judges are entitled to absolute immunity for their judicial  
10 acts." Swift v. California, 384 F.3d 1184, 1188 (9th Cir. 2004). The complaint is clear that  
11 plaintiff is suing Judge Bowers for his judicial act. Judge Bowers is therefore immune, and the  
12 claim against him should be dismissed.

13 D. Due Process: Malicious Prosecution

14 To claim malicious prosecution, a petitioner must allege "that the  
15 defendants prosecuted [him or] her with malice and without  
16 probable cause, and that they did so for the purpose of denying [him  
17 or] her equal protection or another specific constitutional right."  
18 Freeman v. City of Santa Ana, 68 F.3d 1180, 1189 (9th Cir. 1995);  
19 see also Blaxland v. Commonwealth Dir. of Pub. Prosecutions, 323  
20 F.3d 1198, 1204 (9th Cir. 2003) (stating that malicious prosecution  
"concern[s] the wrongful use of legal process"). It requires "the  
institution of criminal proceedings against another who is not guilty  
of the offense charged" and that "the proceedings have terminated  
in favor of the accused." Restatement (Second) of Torts § 653  
(1977).

21 Lacey, 693 F.3d at 919. Plaintiff's complaint retains its claim for malicious prosecution, even  
22 though the prosecutor defendants have been dropped from the lawsuit. Plaintiff appears to be  
23 suing Belyea for "malicious prosecution" based upon the officer's alleged filing of a false police  
24 report, and may also be basing the claim on the allegedly false testimony that Belyea gave at  
25 plaintiff's probable cause hearing.

26 As for the allegedly false testimony, Belyea is absolutely immune from liability, even for  
27 perjured testimony given at a criminal trial or adversarial pretrial hearing. Burns v. Cty. of King,  
28 883 F.2d 819, 821 (9th Cir. 1989) (per curiam) ("witnesses are absolutely immune from suits for

1 damages under 42 U.S.C. § 1983 for testimony given at trial, or for testimony given during  
2 adversarial pretrial proceedings”) (emphasis added) (citing Briscoe v. Lahue, 460 U.S. 325,  
3 345-46 (1983), as interpreted by Holt v. Castaneda, 832 F.2d 123, 127 (9th Cir. 1987), cert.  
4 denied, 485 U.S. 979 (1988)). In this case, plaintiff was entitled to counsel at the hearing he  
5 refers to as a probable cause hearing, and all such hearings are adversarial. See Cal. Penal Code  
6 §§ 858 (defendant has the “right to the aid of counsel in every stage of the proceedings”), 865  
7 (witnesses at preliminary examination “must be examined in the presence of the defendant, and  
8 may be cross-examined in his behalf”).

9 The alleged submission of a false police report, however, may expose a police officer to  
10 Section 1983 liability. Blankenhorn v. City of Orange, 485 F.3d 463, 482 (9th Cir. 2007) (“[a]  
11 police officer who maliciously or recklessly makes false reports to the prosecutor may be held  
12 liable for damages incurred as a proximate result of those reports”). Belyea is entitled only to  
13 qualified immunity for such alleged conduct, and the immunity “may be rebutted by showing . . .  
14 that the investigating officers presented the prosecutor with ‘information known by them to be  
15 false.’” Id., 485 F.3d at 482 (quoting Smiddy v. Varney, 665 F.2d 266-67 (9th Cir. 1981)). Here,  
16 the complaint sufficiently alleges facts that, if true, would enable plaintiff to overcome any claim  
17 of qualified immunity. Specifically, the complaint alleges that Belyea “made a false police report  
18 stating that I confessed to her that I went into Wal-Mart to steal . . .” Complaint at 10.  
19 Moreover, the complaint is clear that this was not simply an error on Belyea’s part, but rather,  
20 “[t]his story was fabricated . . .” Id. Thus, plaintiff should be permitted to pursue this claim.

#### 21 IV. CONCLUSION

22 IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a district judge  
23 to this action.

24 For the reasons stated above, IT IS HEREBY RECOMMENDED that:

- 25 1. All claims against defendants Figaro, Garrison and Judge Bowers, should be  
26 DISMISSED without leave to amend, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) (fails to state a  
27 claim), (iii) (claim asserted against immune defendant);
- 28 2. The malicious prosecution claim against Belyea should be DISMISSED IN PART,


1 without leave to amend, but only to the degree it is based upon alleged perjury at the “probable  
2 cause” hearing; and

3 3. Plaintiff should be permitted to proceed against Belyea on (a) the malicious  
4 prosecution claim, to the degree it is based upon the submission of an allegedly false police  
5 report, and (b) the false arrest claim.

6 If this recommendation is adopted, the undersigned will issue an order directing service  
7 upon defendant Belyea.

8 These findings and recommendations are submitted to the United States District Judge  
9 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one (21)  
10 days after being served with these findings and recommendations, plaintiff may file written  
11 objections with the court. Such document should be captioned “Objections to Magistrate Judge’s  
12 Findings and Recommendations.” Local Rule 304(d). Plaintiff is advised that failure to file  
13 objections within the specified time may waive the right to appeal the District Court’s order.  
14 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 DATED: April 12, 2016

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17 ALLISON CLAIRE  
18 UNITED STATES MAGISTRATE JUDGE  
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