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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA NEIL HARRELL,
Plaintiff,
v.
FAIRFIELD POLICE DEPT., et. al.,
Defendants.

No. 2:15-cv-00693 GEB AC P

ORDER

Plaintiff is proceeding without counsel in an action brought under 42 U.S.C. § 1983. His filings indicate that he was incarcerated at the time he filed this action. See ECF No. 2 at 1. Recent filings indicate that he has been released on probation, however. See ECF No. 18 at 1. In addition to filing a complaint (ECF No. 1), plaintiff has filed an application to proceed in forma pauperis. ECF No. 2.

I. Application to Proceed In Forma Pauperis

In light of the filings indicating that plaintiff is no longer incarcerated (ECF No. 18 at 2), the court will deny the pending application to proceed in forma pauperis by a prisoner as moot. Plaintiff must file a non-prisoner application to proceed in forma pauperis within thirty days of this order’s filing. The court will direct the clerk to send plaintiff the proper form. Alternatively, plaintiff may pay the full filing fee of 400 dollars.

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1 **II. Screening Requirements**

2 The court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
4 Even though it appears plaintiff is no longer incarcerated, the court is still required to screen his
5 complaint because he seeks to proceed in forma pauperis. 28 U.S.C. § 1915(e)(2). The court
6 must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
7 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
8 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

9 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
12 meritless legal theories or whose factual contentions are clearly baseless.” Jackson v. Arizona,
13 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), superseded by statute
14 on other grounds as stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Neitzke, 490
15 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
16 has an arguable legal and factual basis. Id.

17 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
18 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
19 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
22 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
23 allegations sufficient “to raise a right to relief above the speculative level.” Id. (citations
24 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
25 merely creates a suspicion [of] a legally cognizable right of action.” Id. (alteration in original)
26 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* ' 1216 (3d ed.
27 2004)).

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1 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
2 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell
3 Atl. Corp., 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
4 content that allows the court to draw the reasonable inference that the defendant is liable for the
5 misconduct alleged.” Id. (citing Bell Atl. Corp., 550 U.S. at 556). In reviewing a complaint
6 under this standard, the court must accept as true the allegations of the complaint in question,
7 Hospital Bldg. Co. v. Rex Hosp. Trs., 425 U.S. 738, 740 (1976), as well as construe the pleading
8 in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor, Jenkins v.
9 McKeithen, 395 U.S. 411, 421 (1969).

10 **III. Screening Order**

11 Plaintiff alleges that each of the named defendants had some involvement in the illegal
12 towing of his automotive trailer and denial of his subsequent county tort claim. ECF No. 1 at 8-9.
13 After review of the complaint and, for the reasons stated below, the court finds that plaintiff has
14 failed to state a cognizable claim against any defendant. Accordingly, plaintiff’s complaint will
15 be dismissed with leave to amend.

16 **A. Municipality Sub-Departments**

17 It is well established that sub-departments or bureaus of municipalities are not considered
18 “persons” who may be sued under section 1983. See United States v. Kama, 394 F.3d 1236, 1240
19 (9th Cir. 2005) (concurring) (“[M]unicipal police departments and bureaus are generally not
20 considered ‘persons’ within the meaning of Section 1983.”); Rodriguez v. Cnty. of Contra Costa,
21 No. C 13-02516 SBA, 2013 U.S. Dist. LEXIS 158511, 2013 WL 5946112 at *3 (N.D. Cal. Nov.
22 5, 2013) (citing Hervey v. Estes, 65 F.3d 784, 791 (9th Cir. 1995)) (“Although municipalities,
23 such as cities and counties, are amenable to suit under Monell, sub-departments or bureaus of
24 municipalities, such as the police departments, are not generally considered ‘persons’ within the
25 meaning of § 1983.”). Accordingly, plaintiff may not pursue this action against defendants
26 Fairfield Police Department, Programs Office of Solano County Jail, and Solano County Board of
27 Supervisors.
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1 **B. Solano County**

2 A municipality cannot be held liable under section 1983 for the actions of its employees
3 pursuant to a theory of *respondeat superior*. See Monell v. Dep't of Soc. Servs., 436 U.S. 658,
4 691 (1978). Instead, a public entity may be held liable only where a plaintiff pleads that “(1) that
5 [the plaintiff] possessed a constitutional right of which [s]he was deprived; (2) that the
6 municipality had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff’s
7 constitutional right; and, (4) that the policy is the moving force behind the constitutional
8 violation.” Dougherty v. City of Covina, 654 F.3d 892, 900 (2011) (internal quotation marks and
9 citations omitted). It is unclear what specific policy, if any, plaintiff is complaining of in this
10 case. This defendant will, therefore, be dismissed.

11 **C. Kelcris Associates, Inc. and Kathryn A. Parsons**

12 A plaintiff states a claim pursuant to section 1983 only where his alleged deprivation was
13 committed by a person acting under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).
14 Plaintiff alleges that Kelcris Associates, Inc. is a private company which allegedly acted under the
15 name of “Credit Bureau Associates.” ECF No. 1 at 5. He claims that this corporation “imposed
16 an excessive fine” in connection with the towing of his trailer. Id. at 9. Plaintiff does not specify
17 what this fine was imposed for. A review of the exhibits¹ attached to the complaint indicates that
18 Credit Bureau Associates is one of plaintiff’s creditors with whom he had a dispute as to what he
19 owed. Id. at 39, 43-45. The complaint does not allege if or how the corporation acted under color
20 of state law at the times relevant to this complaint. Accordingly, this defendant will be dismissed.
21 The court will also dismiss defendant Kathryn Parsons, whom plaintiff implicates solely on the
22 basis of her ownership of this corporation. Id. at 5, 9.

23 **D. Charles A. Torretta**

24 Plaintiff alleges that defendant Charles Torretta is a senior claims adjuster with George

25 ¹ The Ninth Circuit has held that screening “incorporates the familiar standard applied in the
26 context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v.
27 Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012). Accordingly, the court may consider the exhibits
28 attached to a complaint. See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc., 896 F.2d
1542, 1555 n.19 (9th Cir. 1990) (“[M]aterial which is properly submitted as part of the complaint
may be considered” in ruling on a Rule 12(b)(6) motion to dismiss.)

1 Hills Company, Inc. Id. at 5. He claims that Torretta denied the “valid” tort claim he filed with
2 the Solano County Board of Supervisors. Id. at 9. It is unclear how Torretta’s denial of this
3 claim violated plaintiff’s constitutional rights. Indeed, Torretta’s rejection made clear that
4 plaintiff could proceed to file a court action on his claim. ECF No. 1 at 57. As such, plaintiff’s
5 allegations do not state a viable due process claim. See Zinermon v. Burch, 494 U.S. 113, 126
6 (1990) (“The constitutional violation actionable under § 1983 is not complete when the
7 deprivation occurs; it is not complete unless and until the State fails to provide due process.”).

8 **E. J. Bondoc**

9 Plaintiff alleges that defendant Bondoc, an officer of the Fairfield Police Department,
10 violated his rights by failing to provide him with notice prior to the towing of his trailer from its
11 location on a public street. ECF No. 1 at 8. An exhibit attached to the complaint indicates that
12 Bondoc determined that the trailer’s registration had been expired for over five years. Id. at 21.
13 This same document indicates the trailer was towed pursuant to California Vehicle Code §
14 22651(o). Id. The Ninth Circuit has held that:

15 [D]ue process does not require that a pre-towing notice be given to
16 the owner of a vehicle which has been unregistered for more than
17 one year from the date on which it is found parked on a public
street before the car can be towed under California Vehicle Code §
22651(o).

18 Scotfield v. Hillsborough, 862 F.2d 759, 764 (9th Cir. 1988). Accordingly, plaintiff has failed to
19 state a cognizable claim against defendant Bondoc.

20 **F. Collins**

21 Finally, plaintiff alleges that defendant Collins, a program officer with the Solano County
22 Sheriff’s Office, has denied his request to make photocopies of the instant complaint. ECF No. 1
23 at 7. Plaintiff contends that this refusal violates his right to access the courts. Id. Such a claim
24 requires plaintiff to allege some “actual prejudice with respect to contemplated or existing
25 litigation, such as the inability to meet a filing deadline or to present a claim.” Lewis v. Casey,
26 518 U.S. 343, 348 (1996). Plaintiff has obviously filed his complaint in the present case and, as
27 such, it is unclear how he was prejudiced by Collins’ refusal to make copies for him.

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1 **IV. Leave to Amend**

2 Plaintiff will be granted leave to file an amended complaint in which he can reattempt to
3 allege a cognizable legal theory against a proper defendant and sufficient facts in support of that
4 theory. Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (district courts must
5 afford pro se litigants an opportunity to amend to correct any deficiency in their complaints).
6 Should plaintiff choose to file an amended complaint, the amended complaint must clearly set
7 forth the claims and allegations against each defendant. Any amended complaint must cure the
8 deficiencies identified above and also observe the following:

9 Any amended complaint must identify as a defendant only persons who personally
10 participated in a substantial way in depriving him of a federal constitutional right. Johnson v.
11 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
12 constitutional right if he does an act, participates in another’s act or omits to perform an act he is
13 legally required to do that causes the alleged deprivation).

14 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

15 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. George
16 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

17 Any amended complaint must be written or typed so that it so that it is complete in itself
18 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
19 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
20 earlier filed complaint no longer serves any function in the case. See Forsyth v. Humana, 114
21 F.3d 1467, 1474 (9th Cir. 1997) (the “‘amended complaint supersedes the original, the latter
22 being treated thereafter as non-existent.’”) (quoting Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
23 1967)).

24 Finally, the court notes that any amended complaint should be as concise as possible in
25 fulfilling the above requirements. Fed. R. Civ. P. 8(a). Plaintiff should avoid the inclusion of
26 procedural or factual background which has no bearing on his legal claims. He should also take
27 pains to ensure that his amended complaint is as legible as possible. This refers not only to
28 penmanship, but also spacing and organization. Lengthy, unbroken paragraphs can be difficult to

1 read when handwritten and plaintiff would do well to avoid them wherever possible.

2 **V. Summary of the Order**

3 Your application to proceed in forma pauperis is being denied because you have indicated
4 that you are no longer incarcerated. A new application for non-prisoners is being mailed to you.
5 You must complete the form and submit it within thirty days of this order's entry. Alternatively,
6 you can pay the filing fee of 400 dollars. If you fail to submit either the proper form or the filing
7 fee your case may be dismissed.

8 Your claims are being dismissed because none of them are cognizable. The Fairfield
9 Police Department, Programs Office of Solano County Jail, and Solano County Board of
10 Supervisors are not valid defendants in a section 1983 action.

11 Solano County itself could be sued under section 1983, but only if some policy of the
12 county was the moving force behind a violation of your constitutional rights. You have not
13 alleged any specific policy in this case, or how it led to a constitutional violation.

14 Defendants Kelcris Associates, Inc. and Kathryn A. Parsons are being dismissed because
15 you have not alleged how they violated your constitutional rights or that they acted pursuant to
16 state authority.

17 Defendant Charles A. Torretta is being dismissed because you have not sufficiently
18 alleged that his denial of your claim violated your due process rights.

19 Defendants Bondoc and Collins are being dismissed because the case law cited above
20 squarely indicates that your claims against them are not viable.

21 You are being given an opportunity to submit an amended complaint in which you can
22 address the problems mentioned above. You should submit that complaint to the court within
23 thirty days of this order's filing date. Failure to do so may result in the dismissal of this action.

24 **VI. Conclusion**

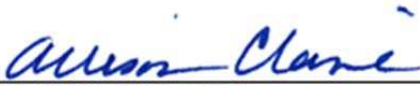
25 Accordingly, IT IS HEREBY ORDERED that:

- 26 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) is denied.
27 2. The Clerk of Court is directed to mail plaintiff a non-prisoner in forma pauperis
28 application with this order.

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3. Plaintiff should submit either a completed non-prisoner in forma pauperis application or the full filing fee within 30 days.
4. The complaint (ECF No. 1) is dismissed with leave to amend within 30 days. The complaint must bear the docket number assigned to this case and be titled “Amended Complaint.” Failure to comply with this order will result in dismissal of this action for failure to prosecute. If plaintiff files an amended complaint stating a cognizable claim the court will proceed with service of process by the United States Marshal.

DATED: May 9, 2017



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE