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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAYMOND M. DOUGLAS,
Plaintiff,
v.
CITY OF SACRAMENTO, et al.,
Defendants.

No. 2:16-cv-0375 MCE AC (PS)

ORDER

Plaintiff is proceeding in this action pro se. This proceeding was referred to the undersigned by E.D. Cal. R. (“Local Rule”) 302(c)(21). This case is related to Douglas v. County of Sacramento, 2:16-cv-0415 (E.D. Cal.). ECF No. 7.

Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis (“IFP”). Plaintiff has submitted the affidavit required by Section 1915(a) showing that plaintiff is unable to prepay fees and costs or give security for them. ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted. 28 U.S.C. § 1915(a).

I. SCREENING

Granting IFP status does end the court’s inquiry, however. The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

1 Plaintiff must assist the court in making this determination by drafting their complaint so
2 that it contains a “short and plain statement” of the basis for federal jurisdiction (that is, the
3 reason the case is filed in this court, rather than in a state court), as well as a short and plain
4 statement showing that plaintiffs are entitled to relief (that is, who harmed the plaintiffs, and in
5 what way). Plaintiffs’ claims must be set forth simply, concisely and directly. See “Rule 8” of
6 the Federal Rules of Civil Procedure (Fed. R. Civ. P. 8). The Federal Rules of Civil Procedure
7 are available online at [www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure)
8 [rules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure). Forms are also available to help pro se plaintiffs organize their complaint
9 in the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor, Sacramento,
10 CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

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

18 However, the court need not accept as true, legal conclusions cast in the form of factual
19 allegations, or allegations that contradict matters properly subject to judicial notice. See Western
20 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981); Spewell v. Golden State Warriors,
21 266 F.3d 979, 988 (9th Cir.), as amended, 275 F.3d 1187 (2001).

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

II. THE COMPLAINT

The following description assumes, for purposes of this screening only, the truth of the allegations of the complaint. On March 23, 2015, plaintiff had taken shelter “inside of boxes that protected him from cold, wind or other encounters” in “a courtyard of a hospital complex.” Complaint (ECF No. 1) ¶ 4. At or around 10:30 p.m., defendant Police Officer Rath, Badge # 610, “viciously and violently” tore away the boxes protecting plaintiff. *Id.* ¶¶ 4, 5. Rath then searched plaintiff and his belongings, and restrained plaintiff while a Sheriff’s Deputy arrested plaintiff, even though no reasonable suspicion or probable cause existed to do so. *Id.* ¶ 9. The complaint names the City of Sacramento and the Sacramento Police Department as additional defendants, but makes no allegations against them. The complaint names no other defendants.

III. ANALYSIS

For screening purposes, the complaint states cognizable Section 1983 (42 U.S.C. § 1983) claims for relief against defendant Rath.¹ These claims are for (1) violating the Fourth Amendment of the U.S. Constitution by unreasonably searching and seizing plaintiff’s person and property,² and (2) violating the Due Process Clause of the Fourteenth Amendment by (a) invading plaintiff’s security and privacy,³ and (b) seizing plaintiff’s property without due process.⁴

However, the complaint fails to state a cognizable claim against the City of Sacramento or the Sacramento Police Department. These defendants cannot be held liable under Section 1983

¹ The court notes that plaintiff admits that he has already signed a “Release of all Claims” related to this incident, and was paid \$2,000 in settlement. Complaint ¶¶ 24-26. However, “[s]ettlement and release is an affirmative defense” that is subject to waiver by defendant. *Lowery v. Channel Communications, Inc. (In re Cellular 101, Inc.)*, 539 F.3d 1150, 1155 (9th Cir. 2008) (citing Fed. R. Civ. P. 8(c), which includes “release” in the list of affirmative defenses). As such, this admission does not mean that plaintiff has failed to state a claim, or that the claim is frivolous, for screening purposes. The court also notes that in the related case, plaintiff alleges that the Release was the result of “duress and undue influence.” See *Douglas v. County of Sacramento*, 2:16-cv-0415, ECF No. 1 ¶ 4 (E.D. Cal. February 26, 2016).

² See *Lavan v. City of Los Angeles*, 693 F.3d 1022, 1027-31 (9th Cir. 2012) (the Fourth Amendment protects the homeless against unreasonable seizure and destruction of their un-abandoned property), *cert. denied*, 133 S. Ct. 2855 (2013).

³ See *Ingraham v. Wright*, 430 U.S. 651, 673 (1977) (“[a]mong the historic liberties” protected by the Due Process Clause “was a right to be free from and to obtain judicial relief, for unjustified intrusions on personal security”).

⁴ See *Lavan*, 693 F.3d 1022 at 1031-33 (the Due Process clause protects the homeless against having their property taken without the due process of law).

1 based solely upon the conduct of Officer Rath, as that would be “vicarious liability.” See
2 Connick v. Thompson, 563 U.S. 51, 60 (2011)) (municipal defendants “are not vicariously liable
3 under § 1983 for their employees’ actions”). Instead, these defendants can be held liable only for
4 the harm caused by their own actions and policies. Id. (municipal defendants “are responsible
5 only for their own illegal acts”) (internal quotation marks omitted); Monell v. Dep’t of Soc. Servs.
6 of City of New York, 436 U.S. 658 (1978). Therefore, “to prevail on a Fourth Amendment
7 § 1983 claim against a municipal defendant or police department,” plaintiff must allege facts
8 showing:

- 9 (1) that he was “deprived of [his] constitutional rights by
10 defendants and their employees acting under color of state law;
11 (2) that the defendants have customs or policies which amount to
12 deliberate indifference to ... constitutional rights; and (3) that these
policies [were] the moving force behind the constitutional
violations.”

13 Gant v. County of Los Angeles, 772 F.3d 608, 617 (9th Cir. 2014) (quoting Lee v. City of Los
14 Angeles, 250 F.3d 668 (9th Cir. 2001)).

15 One way the “customs or policies” requirement can be satisfied is if plaintiff can
16 truthfully allege facts showing that he was harmed by the municipal defendants’ custom or policy
17 of conducting inadequate “training or supervision,” where that training or supervision “is
18 sufficiently inadequate as to constitute ‘deliberate indifference’ to the righ[t]s of persons” with
19 whom its deputies come into contact. Davis v. City of Ellensburg, 869 F.2d 1230, 1235 (9th
20 Cir. 1989) (quoting City of Canton v. Harris, 489 U.S. 378 (1989)). The requirement can also be
21 satisfied if plaintiff can truthfully allege facts showing that the municipal defendants ratified
22 Officer Rath’s allegedly unconstitutional conduct. See Jett v. Dallas Indep. Sch. Dist., 491 U.S.
23 701, 737 (1989) (Section 1983 claim may be made out by acquiescence in a longstanding practice
24 or custom which constitutes the “standard operating procedure” of the local governmental entity).

25 Plaintiff’s complaint alleges no such facts against the municipal defendants, and therefore,
26 the complaint fails to state a claim against them.

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1 IV. CONCLUSION

2 For the reasons stated above, IT IS HEREBY ORDERED that:

3 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2), is GRANTED.

4 2. Plaintiff may proceed now to serve Officer Rath, as set forth below, and pursue his
5 claims against only that defendant. Alternatively, he may delay serving Officer Rath, and attempt
6 to state a cognizable claim against the City of Sacramento and the Sacramento Police Department.

7 3. **If plaintiff elects to amend his complaint to state a cognizable claim against the**
8 **municipal defendants, he has thirty days so to do**, and he may skip the following service
9 instructions (Nos. 4-10). Plaintiff is not obligated to amend his complaint. However, if he does
10 so, the amended complaint will also be subject to screening.

11 4. **If plaintiff elects to proceed now against Officer Rath alone**, then within thirty days,
12 plaintiff must return the materials for service of process that are enclosed with this order, as
13 described below. In this event the court will construe plaintiff's election as consent to the
14 dismissal of all claims against the City of Sacramento and the Sacramento Police Department,
15 without prejudice.

16 5. Service is appropriate for the following defendant: Police Officer Rath, Badge # 610.

17 6. The Clerk of the Court is directed to issue forthwith, and the U.S. Marshal is directed
18 to serve within ninety days of the date of this order, all process pursuant to Federal Rule of Civil
19 Procedure 4, without prepayment of costs.

20 7. The Clerk of the Court shall send plaintiff, for each defendant in ¶ 5, above: one
21 USM-285, one summons, a copy of the complaint, and an appropriate form for consent to trial by
22 a magistrate judge.

23 8. Plaintiff is directed to supply the U.S. Marshal, within 15 days from the date this order
24 is filed, all information needed by the Marshal to effect service of process, and shall file a
25 statement with the court that said documents have been submitted to the United States Marshal.

26 The court anticipates that, to effect service, the U.S. Marshal will require, for each defendant in
27 ¶ 5, above, at least:

28 a. One completed summons;

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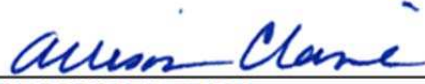
- b. One completed USM-285 form;
- c. One copy of the endorsed filed complaint, with an extra copy for the U.S. Marshal; and
- d. One copy of the instant order.

9. In the event the U.S. Marshal is unable, for any reason whatsoever, to effect service on Officer Rath within 90 days from the date of this order, the Marshal is directed to report that fact, and the reasons for it, to the undersigned.

10. The Clerk of the Court is directed to serve a copy of this order on the U.S. Marshal, 501 "I" Street, Sacramento, Ca., 95814, Tel. No. (916) 930-2030.

11. Failure to comply with this order may result in a recommendation that this action be dismissed.

DATED: April 30, 2016



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
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Plaintiff,

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CITY OF SACRAMENTO, et al.,

Defendants.

No. 2:16-cv-0375 MCE AC (PS)

NOTICE OF SUBMISSION

Plaintiff has submitted the following documents to the U.S. Marshal, in compliance with the court's order filed _____:

- ___ completed summons form
- ___ completed USM-285 form
- ___ copy of the complaint
- ___ completed form to consent or decline to consent to magistrate judge jurisdiction

Date

Plaintiff's Signature