

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRICE ANTHONY PEELER,
Plaintiff,
v.
KEVIN REALI, et al.,
Defendants.

No. 2:16-cv-00582 CKD P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this federal civil rights action pursuant to 42 U.S.C. § 1983.

I. Procedural History

On May 20, 2016, plaintiff’s original complaint was dismissed with leave to amend. ECF No. 5. Thereafter, plaintiff’s amended complaint alleging false arrest and malicious prosecution was dismissed without prejudice by the undersigned based on plaintiff’s consent to proceed before a United States Magistrate Judge. ECF Nos. 4, 10. On October 25, 2016, plaintiff appealed the dismissal of his amended complaint to the Ninth Circuit Court of Appeals. ECF No. 17.

On January 22, 2018, the Ninth Circuit vacated and remanded plaintiff’s case in light of its decision in Williams v. King, 875 F.3d 500, 503-04 (9th Cir. 2017), which requires all parties, including unserved defendants, to consent to proceed before a magistrate judge. ECF No. 25.

1 The Court of Appeals concluded that the undersigned lacked jurisdiction to dismiss plaintiff's
2 amended complaint because defendants had not consented to proceed before the magistrate judge.
3 Id. Accordingly, the undersigned will proceed to re-screen plaintiff's first amended complaint in
4 light of the Ninth Circuit's mandate. ECF No. 26.

5 **II. Re-Screening of First Amended Complaint**

6 Plaintiff's original complaint alleged that Sacramento County Detective Reali caused
7 plaintiff to be maliciously prosecuted on a criminal firearm count. At trial, plaintiff was acquitted
8 of this count, though found guilty of other counts stemming from the same incident. See ECF
9 No. 5. In the first amended complaint, plaintiff names additional defendants in Sacramento
10 County law enforcement, including the prosecutor in plaintiff's case, Aaron Miller. ECF No. 10.
11 Plaintiff asserts that Miller maliciously amended the information to charge him with two
12 additional felonies after plaintiff filed an excessive force claim against the officers involved in
13 plaintiff's arrest. Id. at 20-21, 31-36, 42. Plaintiff was subsequently found not guilty of one of
14 these charges. Id. at 83. Plaintiff alleges that malicious prosecution is "persistent and
15 widespread" in Sacramento County, amounting to a municipal policy. Id. at 17.

16 **III. Analysis**

17 Having reviewed the first amended complaint and attached records, the undersigned
18 concludes that it fails to cure the defects of the original complaint as discussed in the May 20,
19 2016 screening order. Plaintiff fails to state a malicious prosecution claim under the standard in
20 Freeman v. City of Santa Ana, 68 F.3d 1180 (9th Cir. 1995) and has not alleged an
21 unconstitutional municipal policy. Because it appears that another round of amendment would be
22 futile, the undersigned will recommend dismissal of this action for failure to state a claim.

23 Accordingly, IT IS HEREBY ORDERED that this case be randomly assigned to a district
24 court judge.

25 IT IS FURTHER RECOMMENDED that this action be dismissed without prejudice for
26 failure to state a claim.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written
2 objections with the court and serve a copy on all parties. Such a document should be captioned
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
4 objections shall be served and filed within fourteen days after service of the objections. The
5 parties are advised that failure to file objections within the specified time may waive the right to
6 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 Dated: March 6, 2018

8 
9 _____
10 CAROLYN K. DELANEY
11 UNITED STATES MAGISTRATE JUDGE

12
13
14
15 12/peel0582.f&r.docx
16
17
18
19
20
21
22
23
24
25
26
27
28