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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER JEFFREY SAGE,
Plaintiff,
v.
SHASTA COUNTY, CITY OF
REDDING, REDDING POLICE
DEPARTMENT, et al.,
Defendants.

No. 2:16-cv-0982 AC PC

ORDER

Plaintiff, a state prisoner proceeding in pro se, filed his original civil rights complaint and a request to proceed in forma pauperis on May 9, 2016. ECF Nos. 1, 2. Plaintiff was granted in forma pauperis (IFP) status, and upon screening his complaint was dismissed with leave to amend. ECF No. 5. Plaintiff timely filed a First Amended Complaint on June 17, 2016. ECF No. 6.

I. SCREENING

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).

Plaintiff must assist the court in making this determination by drafting the Complaint so that it contains a “short and plain statement” of the basis for federal jurisdiction (that is, the

1 reason the case is filed in this court, rather than in a state court), as well as a short and plain
2 statement showing that plaintiff is entitled to relief (that is, who harmed plaintiff, and in what
3 way). Plaintiff's claims must be set forth simply, concisely and directly. See "Rule 8" of the
4 Federal Rules of Civil Procedure (Fed. R. Civ. P. 8). The Federal Rules of Civil Procedure are
5 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)
6 [rules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure). Forms are also available to help a pro se plaintiff organize the Complaint
7 in the proper way. They are available online at www.uscourts.gov/forms/pro-se-forms .

8 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
9 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing plaintiff's Complaint under this
10 standard, the court will (1) accept as true all of the factual allegations contained in the Complaint,
11 unless they are clearly baseless or fanciful, (2) construe those allegations in the light most
12 favorable to the plaintiff, and (3) resolve all doubts in the plaintiff's favor. See Neitzke, 490 U.S.
13 at 327; Erickson v. Pardus, 551 U.S. 89, 94 (2007); Von Saher v. Norton Simon Museum of Art
14 at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert. denied, 564 U.S. 1037 (2011).

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

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

26 II. THE AMENDED COMPLAINT

27 Plaintiff sues the County of Shasta, the City of Redding, the Redding Police Department,
28 and six named individuals (Officers Hunt, Little, Konkeoviman, Williams, and Cowan, and Sgt.

1 Maready) for the alleged use of excessive force on May 20, 2015. Plaintiff alleges that on that
2 date, police responded to a “slight altercation” that plaintiff had with a mailman. The first two
3 officers to arrive on the scene forced plaintiff to the ground and pepper sprayed him in the face
4 several times, causing pain and difficulty breathing. The officers struck and kicked plaintiff
5 while he lay on the ground in handcuffs. The handcuffs were so tight that they caused great pain.
6 Other officers arrived, and joined in the beating. Plaintiff was roughly placed in a police car, but
7 shortly thereafter was dragged from the vehicle by two officers who “slammed” him from a
8 standing position to face-down in the street. The handcuffs were re-applied even more tightly,
9 and plaintiff was again beaten as he lay on the ground. Plaintiff was hog-tied, and the beating
10 continued. A crowd gathered and onlookers called on the officers to not be so rough. Plaintiff
11 was accused of spitting and a “spit hood” was placed over his head, which made it harder to
12 breathe. One officer repeatedly ground plaintiff’s face into the asphalt while grinding his knee
13 into plaintiff’s temple. Plaintiff almost lost consciousness, and feared for his life. The officers
14 put plaintiff back in the police car, and took him directly to the hospital where he was treated for
15 his wounds. The officers used pain compliance techniques during the entire 4 hours that plaintiff
16 was in their custody. When plaintiff was taken from the hospital to the jail, he was “pulled” and
17 “yanked” and “carried” to a holding cell. As officers removed plaintiff’s restraints, they
18 threatened to “taze [him]” before finally leaving him alone. ECF No. 6 at 4-10.

19 III. ANALYSIS

20 A. Plaintiffs’ Section 1983 Civil Rights Claim(s)

21 1. Fourth Amendment Excessive Force Standards

22 An excessive force claim arising in the context of an arrest invokes the protections of the
23 Fourth Amendment. Graham v. Connor, 490 U.S. 386, 394 (1989). “An objectively
24 unreasonable use of force is constitutionally excessive and violates the Fourth Amendment’s
25 prohibition against unreasonable seizures.” Torres v. City of Madera, 648 F. 3d 1119, 1123-24
26 (9th Cir. 2011), cert. denied, 132 S. Ct. 1032 (2012). The facts alleged in the complaint, assumed
27 to be true for purposes of screening, are sufficient to present a cognizable Fourth Amendment

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1 claim. However, the complaint does not adequately state that claim against any particular
2 defendant, for the reasons that follow.

3 2. Individual Liability Under § 1983

4 There can be no liability under 42 U.S.C. § 1983 unless there is an affirmative link or
5 connection between an individual defendant's actions and the claimed constitutional violation.
6 Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980);
7 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). For this reason, the complaint must allege
8 in specific terms how each named defendant is involved. Vague or conclusory allegations of
9 official participation in civil rights violations are not sufficient. See Ivey v. Board of Regents,
10 673 F.2d 266, 268 (9th Cir. 1982).

11 The original complaint did not identify any individual defendants, ECF No. 1, and
12 plaintiff was informed that he must do so. ECF No. 5. The amended complaint does name
13 individual officers. ECF No. 6 at 1(caption), 2 (section III of form complaint). However, the
14 factual allegations of the amended complaint, which are identical to those of the original
15 complaint, do not link any of the named defendants to any of the specific acts alleged to have
16 violated plaintiff's rights. Id. at 3-10. In order to state a claim against any individual, plaintiff
17 must specify that person's role in the alleged assault. The statement of the claim must explain
18 what each named defendant did to violate plaintiff's right to be free from excessive force.

19 3. Supervisory and Municipal Liability Under § 1983

20 Neither the county, nor the city, nor the police department can be liable under § 1983 for
21 the acts of the officers alone, as that would be "vicarious liability." See Connick v. Thompson,
22 563 U.S. 51, 60 (2011) (municipal defendants "are not vicariously liable under § 1983 for their
23 employees' actions"). To prevail on a claim against a municipal defendant or police department,
24 plaintiff must allege facts showing: (1) that he was deprived of his constitutional rights by
25 defendants and their employees acting under color of state law; *and* (2) that the municipal
26 defendants have *customs or policies* which amount to deliberate indifference to specifically
27 identified constitutional rights; and (3) that these policies were the *moving force* behind the
28 constitutional violations. Lee v. City of Los Angeles, 250 F.3d 668, 681 (9th Cir. 2001)

1 (emphasis added). The “customs or policies” requirement can be satisfied by training or
2 supervision that is so inadequate as to demonstrate deliberate indifference to the rights of
3 arrestees. See Davis v. City of Ellensburg, 869 F.2d 1230, 1235 (9th Cir. 1989).

4 Plaintiff has previously been advised of these requirements for municipal liability. ECF
5 No. 5 at 4:1-12. Rather than adding allegations regarding an unconstitutional policy or failure to
6 train, however, the amended complaint alleges that the individual officers “violated the rules &
7 regulations of the Shasta County Police Department [sic] regarding the policies & the use of
8 excessive force.” ECF No. 6 at 3. It appears therefore that plaintiff does not wish to proceed
9 against the city and county defendants.

10 If the individual officers in fact violated applicable departmental policies, they would be
11 individually liable for any constitutional violation they caused. If plaintiff believes this to be the
12 case, as it appears he does, he should drop the county, city and police department from his lawsuit
13 and proceed against the individual defendants only.

14 If, on the other hand, plaintiff believes that the county, city and/or police department
15 caused the alleged constitutional violations through their policies, procedures, or training
16 practices, and wishes to maintain suit against them on that basis, he must specify (1) what the
17 defective policies, procedures, or training practices are, and (2) how they caused the alleged
18 constitutional violations.

19 **B. Plaintiff’s Putative State Law Claims**

20 Plaintiff seeks, among other forms of relief, “money damages under state tort law.” ECF
21 No. 6 at 3. Under California law, the timely presentation of a claim under the California Tort
22 Claims Act (“the Act”) is a condition precedent to any action against a local public entity and/or
23 employee of such an entity. Cal. Govt. Code §§ 900.4, 905, 911.2. Compliance with this
24 requirement is, therefore, a necessary element of a state law claim that must be pled in the
25 complaint. Shirk v. Vista Unified Sch. Dist., 42 Cal.4th 201, 215 (2007); Karim-Panahi v. Los
26 Angeles Police Dep’t, 839 F.2d 621, 627 (9th Cir. 1988). Plaintiff has not pleaded compliance
27 with the Act.

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1 Under the Act, plaintiff must file a claim within 6 months of the date of the accrual of his
2 cause of action. Cal. Govt. Code § 911.2. Because plaintiff's injury occurred on May 20, 2015,
3 his claim was due by November 20, 2015. A claimant may seek permission to file a late claim
4 within a reasonable time *not to exceed one year* after accrual of the claim. *Id.* at § 911.4(a). The
5 time for this action would have expired on May 20, 2016.

6 Plaintiff can only seek recovery under California law if he can truthfully allege that he
7 filed a claim with the local entities in compliance with these deadlines. Karim-Panahi, 839 F.2d
8 at 627. Absent such allegations, the putative state law claim(s) must be dismissed because they
9 fail to state a claim upon which relief may be granted. Id. If plaintiff believes that he has in fact
10 satisfied the California Tort Claims Act, he may amend to add the necessary allegations
11 demonstrating compliance. If he cannot truthfully allege compliance, he may elect to proceed
12 under 42 U.S.C. § 1983 only, by omitting his references to state law in the amended complaint.

13 CONCLUSION

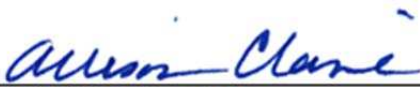
14 For the reasons explained above, the complaint must be dismissed pursuant to 28 U.S.C. §
15 1915(e)(2). Plaintiff will be granted a second opportunity to amend his complaint, and should do
16 so in light of the information provided in this order regarding the additional factual allegations
17 (statements of fact) that are required in order to state a claim against individual officers and/or
18 against local public entities.

19 Accordingly, it is hereby ordered as follows:

- 20 1. The First Amended Complaint, ECF No. 6, is hereby DISMISSED; and
- 21 2. Plaintiff is granted leave to file a Second Amended Complaint within 30 days.

22 Plaintiff is cautioned that failure to timely amend the complaint may result in a
23 recommendation that this action be dismissed.

24 DATED: October 5, 2016

25 
26 ALLISON CLAIRE
27 UNITED STATES MAGISTRATE JUDGE
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