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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

VILAYCHITH KHOUANMANY,

Plaintiff,

v.

UNITED STATES MARSHALS, et al.,

Defendants.

No. 2:17-cv-1326-TLN-EFB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a federal prisoner proceeding pro se with claims arising under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). She alleges that she was sexually assaulted by male members of the United Marshal Service during transport from the Sacramento County Jail to federal court.

Background

On September 19, 2017, the court screened plaintiff’s complaint and found that, although she had stated a potentially cognizable claim against unnamed members of the Marshal Service, these defendants could only be served if they were identified. ECF No. 31 at 3. On November 30, 2017, the court granted plaintiff’s request for a subpoena duces tecum in order to assist in discovery of the identities of the Doe defendants. ECF No. 38 at 1-2. On February 14, 2018, the court amended the subpoena submitted by plaintiff (having found it to be overbroad) and directed service of the subpoena on the custodian of records for the Marshal Service in the Eastern District of California and the custodian of records for the Sheriff of Sacramento County. ECF No. 42.

1 Although no defendant has been served, counsel representing both the United States
2 Marshal and the Sacramento County Sheriff's Department have filed responses indicating
3 compliance with subpoenas served upon them and production of documents to plaintiff in
4 conjunction therewith. ECF Nos. 54, 55, & 56.

5 On October 19, 2018 – more than a year after the initial complaint in this action was filed
6 - the court recommended dismissal of this action for failure to identify any defendant against
7 whom a cognizable claim could be stated. ECF No. 64. On November 26, 2018, plaintiff filed a
8 lengthy filing wherein she offered objections to the court's recommendations, asked to amend her
9 complaint, requested appointment of counsel, and made a vague request to extend time. ECF No.
10 68. As discussed below, that filing included a proposed amended complaint which, although
11 difficult to follow, names one defendant against whom this action may proceed. Accordingly, the
12 court vacates its previous findings and recommendations.

13 Amended Complaint

14 As an initial matter, the proposed amended complaint is poorly organized and often
15 difficult to follow. Plaintiff weaves new allegations with legal objections and often repeats
16 herself. Nevertheless, it is apparent that plaintiff has staked a sufficient Eighth Amendment claim
17 against defendant Alencastre. She alleges that Alencastre sexually assaulted her during two
18 searches – once on February 26, 2016 at the federal courthouse and again on March 1, 2016 at the
19 Sacramento County Jail. ECF No. 68 at 7, 13. The court will recommend that all remaining
20 defendants and claims be dismissed.

21 I. Screening Requirements

22 The court is required to screen complaints brought by prisoners seeking relief against a
23 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
24 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally
25 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek
26 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

27 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”
28 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th

1 Cir. 1984). “[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
2 meritless legal theories or whose factual contentions are clearly baseless.” *Jackson v. Arizona*,
3 885 F.2d 639, 640 (9th Cir. 1989) (citation and internal quotations omitted), *superseded by statute*
4 *on other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *Neitzke*, 490
5 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded,
6 has an arguable legal and factual basis. *Id.*

7 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the
8 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of
9 what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S.
10 544, 555 (2007) (alteration in original) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

11 However, in order to survive dismissal for failure to state a claim, a complaint must contain more
12 than “a formulaic recitation of the elements of a cause of action;” it must contain factual
13 allegations sufficient “to raise a right to relief above the speculative level.” *Id.* (citations
14 omitted). “[T]he pleading must contain something more . . . than . . . a statement of facts that
15 merely creates a suspicion [of] a legally cognizable right of action.” *Id.* (alteration in original)
16 (quoting 5 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, 1216 (3d
17 ed. 2004)).

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

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1 II. Analysis

2 Other than defendant Alencastre, plaintiff has sued: (1) Sacramento County Sheriff Scott
3 Jones; (2) Anne Gaskin-Bailey, Supervising Deputy United States Marshal; (3) United States
4 Marshal Alan Yao; and (4) United States Marshal Sara Deppe. The claims against these
5 individuals are not suitable to proceed in this action.

6 A. Sheriff Jones

7 As the court explained in its previous findings and recommendations, Sheriff Jones cannot
8 be held responsible for plaintiff’s sexual assault merely because he allowed law enforcement
9 officers of the opposite sex to transport her. There is no legal precedent which demands that a
10 supervisor automatically suspect or assume – absent some specific knowledge that he has or has
11 reason to have – that his subordinates will sexually abuse inmates of the opposite sex. And, in
12 any event, there is no indication that Jones had any control over the United States Marshals
13 accused of wrongdoing in this case.

14 Plaintiff appears to concede as much, but now argues that Jones had control over who
15 entered the county jail and “if he had trained and supervised who goes in and out of his County
16 [jail] . . . the males (sic) Marshals would not [have been] allowed inside Sacramento Jail.” ECF
17 No. 68 at 8. This argument is unconvincing. Nothing in plaintiff’s complaint indicates that Jones
18 had reason to know that any marshal would sexually assault her. Thus, he would have had no
19 reason to interfere with federal law enforcement agents who were, by all appearances, discharging
20 their duty to transport inmates to federal court.

21 Plaintiff alleges that Jones is in violation of the Prison Rape Elimination Act (“PREA”)
22 insofar as sexual assault against inmates is prohibited. *Id.* It is undeniably true that it is unlawful
23 for law enforcement to sexually assault inmates in their custody. But, again, nothing in the
24 complaint indicates that Jones had any reason to know that plaintiff would be sexually assaulted.
25 The PREA does not provide for automatic liability for prison supervisors whenever an inmate is
26 sexually mistreated. In fact, the majority of courts to consider the issue have determined that the
27 PREA does not actually provide for a private cause of action. *See, e.g., Hatcher v. Harrington*,
28 2015 U.S. Dist. LEXIS 13799, 2015 WL 474313, at *4-*5 (D. Haw. Feb. 5, 2015) (finding the

1 plaintiff's claims under PREA failed, because “[n]othing in the PREA explicitly or implicitly
2 suggests that Congress intended to create a private right of action for inmates to sue prison
3 officials for noncompliance with the Act,” and although there appears to be no federal appellate
4 decision addressing this issue, “district courts nationwide have found that PREA does not create a
5 private cause of action that can be brought by an individual plaintiff”).

6 B. Defendant Gaskin-Bailey

7 Similar to her allegations against Sheriff Jones, plaintiff claims that Gaskin-Bailey should
8 have ensured that there was at least one female marshal engaged in plaintiff's transport. ECF No.
9 68 at 5. The court is unaware of any case or statutory law requiring as much.¹

10 Next, plaintiff alleges that Gaskin-Bailey should have trained marshals under her
11 supervision to avoid sexually assaulting inmates in their custody. *Id.* This vague claim is
12 insufficient to implicate wrongdoing. In a *Bivens* action, a supervisor is only liable if she
13 personally participated in the alleged violations or knew of the violations and failed to act to
14 prevent them. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Thus, it is wholly
15 insufficient for a claimant to offer an unadorned allegation that a supervisor should have trained
16 her subordinates not to act unlawfully.

17 Finally, plaintiff appears to allege that Gaskin-Bailey violated the PREA. As described
18 above, there is no private action under that act.

19 C. Defendants Yao and Deppe

20 Plaintiff claims that these defendants failed to prevent another inmate who was
21 transported alongside her – Caesar – from sexually assaulting her on the drive from the county
22 jail to the federal courthouse.² ECF No. 68 at 15, 17. These claims are potentially cognizable,
23 but are legally and factually separate from her claims against defendant Alencastre. Pursuant to

24
25 ¹ In a perplexing objection, plaintiff disputes this conclusion by stating that sexual abuse
26 has no penological justification. ECF No. 68 at 5. This statement is correct, plaintiff's
27 conclusion from it is a non-sequitur. The transport of an inmate by opposite-sex correctional
28 officers is not, standing alone, sexual abuse.

² The court is unable to discern any allegation that either Yao or Deppe was positioned to
intervene during the alleged assaults by Alencastre.

1 Federal Rule of Civil Procedure 20(a)(2), individuals may be joined in one action as defendants if
2 any right to relief asserted against them arises out of the same transaction, occurrence or series of
3 transactions and occurrences and any question of law or fact common to all defendants arises in
4 the action. *See also George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (“Unrelated claims
5 against unrelated defendants belong in different suits”). Whether Alencastre sexually assaulted
6 her during two abusive searches is a question that bears no relation to whether Yao and Deppe
7 took sufficient steps to protect her from a male inmate. Accordingly, the court recommends that
8 these defendants and the claims against them be dismissed.

9 D. Leave to Amend

10 Given how long this case has persisted without any defendant being served, the court
11 declines to grant plaintiff further leave to amend. Instead, it will direct her to submit service
12 documents for defendant Alencastre and recommend dismissal of all other defendants and claims.

13 Miscellaneous Relief

14 Plaintiff’s request to file her proposed amend complaint is granted. Her request for
15 appointment of counsel is denied for the same reasons identified in the court’s previous order.
16 *See* ECF No. 67. It is unclear what plaintiff’s request for extension of time relates to and,
17 consequently, that request is denied.

18 Conclusion

19 Based on the foregoing, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations filed on October 19, 2018 (ECF No. 64) are
21 vacated;
- 22 2. Plaintiff’s motion (ECF No. 68) is GRANTED in part – her request to file her
23 proposed amended complaint is granted and the motion is denied in all other respects;
- 24 3. The Clerk of Court is directed to separately docket plaintiff’s motion (ECF No. 68) as
25 “Second Amended Complaint”;
- 26 4. The operative complaint contains allegations sufficient to state a potentially
27 cognizable Eighth Amendment claim against defendant Alencastre;

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NOTICE OF SUBMISSION OF
DOCUMENTS

In accordance with the court’s Screening Order, plaintiff hereby submits the following forms:

- 1 completed summons form
- 1 completed forms USM-285
- 2 copies of the November 26, 2018 complaint

Plaintiff

Dated: