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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAD MICHAEL CREEL,
Plaintiff,
v.
SACRAMENTO COUNTY SHERIFF
DEPARTMENT, et al.,
Defendants.

No. 2:24-cv-01533-KJM-SCR

ORDER

Plaintiff is proceeding pro se in this action, and accordingly this matter was referred to the undersigned pursuant to Local Rule 302(c)(21). Plaintiff filed a motion for leave to proceed in forma pauperis (“IFP”) which was granted. ECF No. 5. On November 5, 2024, the Court issued an Order screening the original complaint pursuant to 28 U.S.C. 1915(e)(2). The Order advised Plaintiff of the deficiencies with the complaint, and allowed him 30 days to file an amended complaint. On December 6, 2024, Plaintiff filed a First Amended Complaint (“FAC”). ECF No. 6. The Court now screens the FAC, and for the reasons provided below, the Court finds Plaintiff’s FAC is legally deficient and will grant Plaintiff a second opportunity to file an amended complaint.

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1 I. SCREENING

2 A. Legal Standard

3 The federal IFP statute requires federal courts to dismiss a case if the action is legally
4 “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). In
6 reviewing the complaint, the Court is guided by the requirements of the Federal Rules of Civil
7 Procedure. Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short
8 and plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this
9 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled
10 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief
11 sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly.
12 Fed. R. Civ. P. 8(d)(1).

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

20 The court applies the same rules of construction in determining whether the complaint
21 states a claim on which relief can be granted. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (court
22 must accept the allegations as true); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (court must
23 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a
24 less stringent standard than those drafted by lawyers. *Erickson*, 551 U.S. at 94. However, the
25 court need not accept as true legal conclusions, even if cast as factual allegations. *See Moss v.*
26 *U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). A formulaic recitation of the elements of
27 a cause of action does not suffice to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
28 555-57 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
2 state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has
3 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
4 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at
5 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity
6 to amend, unless the complaint’s deficiencies could not be cured by amendment. *See Akhtar v.*
7 *Mesa*, 698 F.3d 1202, 1213 (9th Cir. 2012).

8 B. The First Amended Complaint (“FAC”)

9 Plaintiff’s FAC names as defendants: 1) Sacramento County Board of Supervisors; 2)
10 Sacramento County Sheriff’s Department; 3) CHP, and 4) “Jon Doe Jane Doe”. ECF No. 6 at 2-
11 3. The FAC asserts federal question jurisdiction and states “see cover letter.” *Id.* at 4. The civil
12 cover sheet states that jurisdiction is based on the U.S. Government being a Plaintiff, and the
13 nature of the suit is Americans with Disabilities-Employment. ECF No. 6-1. The rest of the form
14 complaint is then blank with only references to “see cover letter.” ECF No. 6 at 4-6.

15 Page eight of the FAC states Plaintiff is pursuing a claim under 42 U.S.C. § 1983 against
16 the California Highway Patrol (“CHP”). ECF No. 6 at 8. Plaintiff alleges he was unlawfully
17 detained for making the middle finger gesture at a passing CHP officer. *Id.* Plaintiff alleges his
18 detention was in retaliation for exercise of his First Amendment rights. Plaintiff contends this
19 unlawful detention occurred on September 17, 2023. *Id.* at 8.

20 The FAC is incorrectly formatted as it contains multiple captions and signatures. Six
21 times the caption is repeated, and in three different places it is signed. At page eleven is a new
22 caption and a description of Plaintiff’s claim against the Sacramento County Sheriff’s
23 Department. ECF No. 6 at 11. Plaintiff contends on January 8, 2024, he was unlawfully detained
24 by the Sacramento County Sheriff’s Department. *Id.* Plaintiff again claims the detention was for
25 making a middle finger gesture. *Id.* at 12.

26 Page 13 then appears to duplicate the allegations on page 11. Page 14 contains a series of
27 conclusory allegations, including excessive force, illegal search and seizure, failure to train,
28 sexual misconduct, and emotional distress. ECF No. 6 at 14-15. Pages 16 through 18 then again

1 repeat allegations against the Sacramento County Sheriff's Department.

2 C. Analysis

3 The FAC does not contain a proper statement of federal jurisdiction. Plaintiff asserts
4 jurisdiction based on the plaintiff being the U.S. Government, which is incorrect, and based on
5 this being an ADA employment action, even though there are not allegations about Plaintiff
6 having a disability or about employment. However, Plaintiff does make reference to 42 U.S.C. §
7 1983, which would be a proper basis for federal jurisdiction. Plaintiff was informed in the prior
8 screening order (ECF No. 5) that, “[Section] 1983 ‘is not itself a source of substantive rights,’ but
9 merely provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v.*
10 *Connor*, 490 U.S. 386, 393–94 (1989). The prior Order also set forth the requirements to state a
11 claim under § 1983. ECF No. 5 at 4. In order to state a claim under section 1983, a plaintiff is
12 required to plead that (1) a defendant acting under color of state law (2) deprived plaintiff of
13 rights secured by the Constitution or federal statutes. *Benavidez v. County of San Diego*, 993
14 F.3d 1134, 1144 (9th Cir. 2021). Plaintiff does not allege that any named individual violated his
15 constitutional rights. Plaintiff could conceivably allege facts to support a claim for First
16 Amendment retaliation related to his making an obscene gesture. *See Duran v. City of Douglas*,
17 904 F.2d 1372, 1378 (9th Cir. 1990); *Mitchell v. City of Henderson*, 2015 WL 427835 (D. Nev.
18 2015) (“Individuals are entitled to verbally oppose police activities, which includes obscene
19 gestures such as giving the middle finger.”). However, as currently pleaded, the instant FAC fails
20 to state a claim.

21 The FAC does not name any individual defendants. To the extent Plaintiff seeks to hold
22 liable a local governmental unit, he would need to satisfy the pleading requirements under the
23 standard set forth in *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). In order to
24 establish liability under *Monell*, “a plaintiff must ... establish that the local government had a
25 deliberate policy, custom, or practice that was the moving force behind the constitutional
26 violation they suffered.” *Vanegas v. City of Pasadena*, 46 F.4th 1159, 1167 (9th Cir. 2022).
27 Plaintiff has not sufficiently alleged a policy, custom, or practice. Plaintiff makes a conclusory
28 assertion that the Sheriff's Department failed to provide adequate training. ECF No. 6 at 14. He

1 claims the Department did not provide adequate training “related to mental health crises and
2 appropriate responses to individuals in distress.” *Id.* Plaintiff does not allege how this alleged
3 inadequate training was the moving force behind a constitutional violation. Plaintiff does not
4 allege that he was having a mental health crisis or was an individual in distress.

5 Plaintiff has also named CHP as a defendant. However, CHP itself is entitled to sovereign
6 immunity from § 1983 claims. *See O’Leary v. California Highway Patrol*, 923 F.2d 862 (9th Cir.
7 1991) (“Because the CHP is a state agency ... and the State of California has not consented to suit
8 ... both the State and the CHP enjoy sovereign immunity and cannot be sued under section
9 1983.”). Individual CHP officers may be sued in their individual or personal capacities under §
10 1983, assuming the other requirements for § 1983 liability are adequately set forth. *See Hafer v.*
11 *Melo*, 502 U.S. 21, 30 (1991) (state officials sued in their individual capacities are “persons”
12 within the meaning of section 1983).

13 There appear to be two different events alleged in the FAC involving different law
14 enforcement agencies. There is the event of September 2023 involving CHP, and the event of
15 January 2024 involving the Sheriff’s Department. Federal Rule of Civil Procedure 20 governs
16 permissive joinder of parties and explains that defendants may be joined into the same action if:
17 (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect
18 to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
19 (B) any question of law or fact common to all defendants will arise in the action. It is unclear
20 whether Plaintiff alleges the two events are part of the same transaction or occurrence.

21 Finally, Plaintiff’s FAC contains conclusory references to “excessive use of force,”
22 “illegal search and seizure,” and “sexual misconduct,” but Plaintiff does not set forth factual
23 allegations to support these conclusions. The court need not assume the truth of legal conclusions
24 cast as factual allegations. *See Moss*, 572 F.3d at 969. A formulaic recitation of the elements of a
25 cause of action does not suffice to state a claim. *See Twombly*, 550 U.S. at 555-57. Pleading that
26 an officer “used excessive force,” does not describe what force was used, the manner of such
27 force, or the circumstances surrounding the use of force.

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1 Although the FAC does not contain a valid jurisdictional statement, the Court would have
2 jurisdiction over any of Plaintiff's cognizable § 1983 claims. The FAC however fails to plead
3 sufficient facts supporting its conclusory assertions, names at least one defendant who has
4 sovereign immunity against suit, and does not plead facts sufficient to establish *Monell* liability.
5 The FAC fails to state a claim and is subject to dismissal pursuant to 28 U.S.C. §
6 1915(e)(2)(B)(ii). However, Plaintiff is proceeding pro se and a pro se litigant should be given
7 leave to amend unless it is absolutely clear that the deficiencies cannot be cured by amendment.
8 *Akhtar*, 698 F.3d at 1212. Rather than recommending dismissal of the action, the undersigned
9 will provide Plaintiff a second opportunity to amend the complaint to allege a proper basis for
10 jurisdiction and facts supporting a cognizable cause of action.

11 II. AMENDING THE COMPLAINT

12 If plaintiff chooses to amend the complaint, the amended complaint must allege facts
13 establishing the existence of federal jurisdiction and address the other issues the Court identified
14 above. In addition, it must contain a short and plain statement of plaintiff's claims. The
15 allegations of the complaint must be set forth in sequentially numbered paragraphs, with each
16 paragraph number being one greater than the one before, each paragraph having its own number,
17 and no paragraph number being repeated anywhere in the complaint. Each paragraph should be
18 limited "to a single set of circumstances" where possible. Rule 10(b). As noted above, forms are
19 available to help plaintiffs organize their complaint in the proper way. They are available at the
20 Clerk's Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or online at
21 www.uscourts.gov/forms/pro-se-forms.

22 Plaintiff's amended complaint shall be clearly labeled as the "**Second Amended**
23 **Complaint**" and shall not contain duplicative portions as the FAC did – for example, it should
24 not contain multiple captions and signature lines.

25 The second amended complaint must not force the Court and the defendants to guess at
26 what is being alleged against whom. *See McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir.
27 1996) (affirming dismissal of a complaint where the district court was "literally guessing as to
28 what facts support the legal claims being asserted against certain defendants"). The second

1 amended complaint should contain specific allegations as to the actions of each named defendant.

2 Also, the second amended complaint must not refer to a prior pleading in order to make it
3 complete. An amended complaint must be complete in itself without reference to any prior
4 pleading. Local Rule 220. This is because, as a general rule, an amended complaint supersedes
5 the original complaint. *See Pacific Bell Tel. Co. v. Linkline Communications, Inc.*, 555 U.S. 438,
6 456 n.4 (2009) (“[n]ormally, an amended complaint supersedes the original complaint”) (citing 6
7 C. Wright & A. Miller, *Federal Practice & Procedure* § 1476, pp. 556-57 (2d ed. 1990)).
8 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
9 of each defendant must be sufficiently alleged.

10 III. CONCLUSION

11 Accordingly, **IT IS HEREBY ORDERED** that:

- 12 1. Plaintiff **shall have 30 days from the date of this order** to file a second amended
13 complaint that addresses the defects set forth above.
- 14 2. Alternatively, if Plaintiff no longer wishes to pursue this action, Plaintiff may file a notice
15 of voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil
16 Procedure.
- 17 3. If Plaintiff does not file a second amended complaint within 30 days, the Court will issue
18 Findings and Recommendations that the action be dismissed for failure to state a claim
19 upon which relief may be granted.

20 SO ORDERED.

21 DATED: January 24, 2025

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24 SEAN C. RIORDAN
25 UNITED STATES MAGISTRATE JUDGE
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