

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BARBARA KAPISI,
Plaintiff,

No. C 08-4314 SI (pr)

ORDER OF SERVICE

v.

SUPERIOR COURT OF
CALIFORNIA; et al.,
Defendants.

INTRODUCTION

Barbara Kapisi, currently an inmate at the Monterey County Jail, filed a pro se civil rights action under 42 U.S.C. § 1983. Kapisi alleges in her complaint that, on March 26, 2008, defendants searched her hotel room at the Country Inn without a warrant and without her consent. She states that the defendants had a search warrant for someone who did not live in the room. Her complaint is now before the court for review under 28 U.S.C. § 1915A.

DISCUSSION

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See id. at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that
2 a right secured by the Constitution or laws of the United States was violated and (2) that the
3 violation was committed by a person acting under the color of state law. See West v. Atkins,
4 487 U.S. 42, 48 (1988).

5 The Fourth Amendment proscribes "unreasonable searches and seizures." U.S. Const.
6 amend. IV. "[S]earches and seizures inside a home without a warrant are presumptively
7 unreasonable." Payton v. New York, 445 U.S. 573, 586 (1980). The same protections apply
8 to an individual in his or her hotel room. United States v. Brooks, 367 F.3d 1128, 1133 n.4 (9th
9 Cir. 2004) (citation omitted). Liberally construed, the allegations in the complaint that Kapisi's
10 hotel room was searched without her consent state a cognizable claim for a Fourth Amendment
11 violation. Kapisi has named as defendants seven law enforcement officers, most in the narcotics
12 division, who were involved in the search of her hotel room. She has adequately linked them
13 to her claim.

14 Kapisi also names as defendants Monterey County Sheriff Kankelakis and California
15 Governor Arnold Schwarzenegger. She does not allege that either of these individuals played
16 any role in the search of her hotel room, and apparently names them because they are the people
17 in charge of governmental entities. There is no respondeat superior liability under Section 1983,
18 i.e. no liability under the theory that one is responsible for the actions or omissions of an
19 employee. Liability under Section 1983 arises only upon a showing of personal participation
20 by the defendant. Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Accordingly, the Sheriff
21 and Governor will be dismissed without prejudice.

22
23 **CONCLUSION**

24 For the foregoing reasons,

25 1. The complaint states a claim for relief under 42 U.S.C. § 1983 against defendants
26 Lindholm, Karamitis, Pickens, Jorgenson, Gonzales, Clester, and Davis for a violation of her
27 rights under the Fourth Amendment. Monterey County Sheriff Kankelakis and California
28 Governor Arnold Schwarzenegger are dismissed from this action.

1 2. The clerk shall issue a summons and the United States Marshal shall serve, without
2 prepayment of fees, the summons, a copy of the complaint and a copy of all the documents in
3 the case file upon the following defendants:

- 4 - Officer K. Lindholm (California Highway Patrol)
- 5 - Sergeant D. Karamitis (Monterey County Sheriff - narcotics division)
- 6 - Detective B. Pickens (Monterey County Sheriff - narcotics division)
- 7 - Detective R. Jorgenson (Monterey County Sheriff - narcotics division)
- 8 - Deputy R. Gonzales (Monterey County Sheriff - narcotics division)
- 9 - Deputy B. Clester (Monterey County Sheriff - narcotics division)
- 10 - Deputy M. Davis (Monterey County Sheriff - narcotics division).

11 3. In order to expedite the resolution of this case, the following briefing schedule for
12 dispositive motions is set:

13 a. No later than **June 5, 2009**, defendants must file and serve a motion for
14 summary judgment or other dispositive motion. If defendants are of the opinion that this case
15 cannot be resolved by summary judgment, they must so inform the court prior to the date the
16 motion is due.

17 b. Plaintiff's opposition to the summary judgment or other dispositive motion
18 must be filed with the court and served upon defendants no later than **July 10, 2009**. Plaintiff
19 must bear in mind the following notice and warning regarding summary judgment as she
20 prepares her opposition to any summary judgment motion:

21 The defendants may make a motion for summary judgment by which they
22 seek to have your case dismissed. A motion for summary judgment under Rule
23 56 of the Federal Rules of Civil Procedure will, if granted, end your case. ¶
24 Rule 56 tells you what you must do in order to oppose a motion for summary
25 judgment. Generally, summary judgment must be granted when there is no
26 genuine issue of material fact -- that is, if there is no real dispute about any fact
27 that would affect the result of your case, the party who asked for summary
28 judgment is entitled to judgment as a matter of law, which will end your case.
When a party you are suing makes a motion for summary judgment that is
properly supported by declarations (or other sworn testimony), you cannot simply
rely on what your complaint says. Instead, you must set out specific facts in
declarations, depositions, answers to interrogatories, or authenticated documents,
as provided in Rule 56(e), that contradict the facts shown in the defendants'
declarations and documents and show that there is a genuine issue of material fact
for trial. If you do not submit your own evidence in opposition, summary
judgment, if appropriate, may be entered against you. If summary judgment is
granted, your case will be dismissed and there will be no trial. (See Rand v.
Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998).

1 c. If defendants wish to file a reply brief, the reply brief must be filed and
2 served no later than **July 31, 2009**.

3 4. All communications by plaintiff with the court must be served on a defendant's
4 counsel by mailing a true copy of the document to defendant's counsel. The court may disregard
5 any document which a party files but fails to send a copy of to her opponent. Until a defendant's
6 counsel has been designated, plaintiff may mail a true copy of the document directly to
7 defendant, but once a defendant is represented by counsel, all documents must be mailed to
8 counsel rather than directly to that defendant.


9 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
10 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is
11 required before the parties may conduct discovery.

12 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
13 court informed of any change of address and must comply with the court's orders in a timely
14 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
15 pursuant to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of
16 address in every pending case every time she is moved to a new facility.

17 7. Plaintiff is cautioned that she must include the case name and case number for this
18 case on any document she submits to this court for consideration in this case.

19 IT IS SO ORDERED.

20 Dated: March 3, 2009



SUSAN ILLSTON
United States District Judge

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