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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT LAWRENCE WILLIAMS,
Plaintiff,
v.
CALIFORNIA HIGHWAY PATROL,
et al.,
Defendants.

Case No. [14-cv-03969-JCS](#) (PR)

**ORDER DISMISSING THE
COMPLAINT WITH LEAVE TO
AMEND**

INTRODUCTION

Plaintiff, a Nevada state prisoner proceeding pro se, has filed this federal civil rights action under 42 U.S.C. § 1983 in which he raises claims against the California Highway Patrol (“CHP”) and two of its officers. After reviewing the complaint pursuant to 28 U.S.C. § 1915(e), the Court DISMISSES the complaint with leave to file an amended complaint on or before March 2, 2015.¹

¹ Plaintiff consented to magistrate judge jurisdiction. (Compl. at 4.) The magistrate judge, then, has jurisdiction to issue this order, even though defendants have not been served or consented to magistrate judge jurisdiction. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995) (holding that magistrate judge had jurisdiction to dismiss prisoners action under 42 U.S.C. § 1983 as frivolous without consent of defendants because they had not been served and therefore were not parties).

1 **DISCUSSION**

2 **A. Standard of Review**

3 In its initial review of this pro se complaint, this Court must dismiss any claim that
4 is frivolous or malicious, or fails to state a claim on which relief may be granted, or seeks
5 monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C.
6 § 1915(e). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police*
7 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

8 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a
9 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949
10 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has
11 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
12 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
13 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
14 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
15 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55
16 (9th Cir. 1994).

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

21 **B. Legal Claims**

22 Plaintiff alleges that on September 6, 2012, CHP Officers R. Adams and J. Salaun
23 pulled his vehicle over for speeding, arrested him, and seized his car, which has not been
24 returned to him. It is not clear whether plaintiff contests the validity of the traffic stop, his
25 arrest, the seizure of his vehicle, or the CHP’s continued retention of the vehicle, or all
26 four. Because it is not clear what claims he is pursuing, the complaint will be dismissed
27 with leave to amend.

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include the caption and civil case number used in this order (14-3969 JCS (PR)) and the words FIRST AMENDED COMPLAINT on the first page. It must address all deficiencies discussed above. Because an amended complaint completely replaces the previous complaints, plaintiff must include in his first amended complaint all the claims he wishes to present and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the prior complaint by reference. Failure to file an amended complaint in accordance with this order will result in dismissal of this action without further notice to plaintiff.

It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court informed of any change of address by filing a separate paper with the clerk headed "Notice of Change of Address." He must comply with the Court's orders in a timely fashion or ask for an extension of time to do so. Failure to comply may result in the dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: January 22, 2015



JOSEPH C. SPERO
United States Chief Magistrate Judge

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v.
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Case No. [14-cv-03969-JCS](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/22/2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Robert Lawrence Williams ID: 1118862
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

Dated: 1/22/2015

Richard W. Wieking
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO