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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

WILLIE M. FLANIGAN,
Plaintiff,
v.
SAN FRANCISCO POLICE
DEPARTMENT, et al.,
Defendants.

Case No. [16-cv-00066-LB](#)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

[Re: ECF No. 1]

INTRODUCTION

Willie M. Flanigan, an inmate at the San Mateo County Jail in Redwood City, filed this *pro se* prisoner’s civil rights action under 42 U.S.C. § 1983. He consented to proceed before a magistrate judge. (ECF No. 1 at 4.)¹ This action is now before the court for review of the complaint. This order finds that the complaint has several deficiencies and requires Mr. Flanigan to file an amended complaint.

STATEMENT

Mr. Flanigan alleges in his complaint that he “was targeted for an unwarrant[ed] and random stop based upon [his] race for harassment purposes” by San Francisco police sergeant Holder.

¹ Citations are to the Electronic Case File (“ECF”); pin cites are to the ECF-generated page numbers at the tops of the documents.

1 (ECF No. 1 at 3.) “When ignored,” Sergeant Holder became “enraged and out of control to the
2 point of attacking the car [Mr. Flanigan] was driving in an attempt to provoke an incident into [a]
3 phony excuse [to] arrest!” (*Id.* at 3, 5.) Sergeant Holder kicked Mr. Flanigan’s car, after which
4 sergeant Holder broadcast a false hit-and-run call. (*Id.* at 5.) “That phony distress call put his
5 fellow co-workers into attack-mode.” (*Id.*) Mr. Flanigan was beaten when he was arrested. The
6 arresting officers “kicked [him] in the face,” stomped him, and choked him with a billy club. (*Id.*
7 at 6.) Mr. Flanigan further alleges, “While I was hogtied on my stomach I had an officer with his
8 knee bent [sic] to the back of my head holding my face in place to be kick!” (*Id.*) An exhibit to the
9 complaint indicates that Mr. Flanigan was taken to the San Francisco General Hospital and
10 received treatment on October 31, 2014 and November 1, 2014. (*Id.* at 8.)

11 The complaint also alleges that Sergeant Tam, Sergeant Ryan, Officer Macci, Officer Hicklin,
12 officer Harris and sergeant Holder “were dishonest and committed crimes such as fabrication of
13 evidence.” (*Id.*)

14 ANALYSIS

15 A federal court must engage in a preliminary screening of any case in which a prisoner seeks
16 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
17 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
18 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
19 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se*
20 complaints must be liberally construed. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

21 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) a right
22 secured by the Constitution or laws of the United States was violated, and (2) the violation was
23 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48
24 (1988).

25 The complaint fails to state a claim upon which relief may be granted against any defendant.
26 Mr. Flanigan must file an amended complaint to cure the deficiencies identified in this order.

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1 Traffic Stop: A traffic stop constitutes a seizure for Fourth Amendment purposes. “An officer
2 may conduct a traffic stop if the officer has ‘probable cause to believe that a traffic violation has
3 occurred.’” *United States v. Fowlkes*, 804 F.3d 954, 971 (9th Cir. 2015) (quoting *Whren v. United*
4 *States*, 517 U.S. 806, 810 (1996)). “To justify an investigative stop, a police officer must have
5 reasonable suspicion that a suspect is involved in criminal activity.” *United States v. Colin*, 314
6 F.3d 439, 442 (9th Cir. 2002). The complaint did not adequately allege a Fourth Amendment
7 claim. If Mr. Flanigan wishes to pursue a Fourth Amendment claim, he needs to allege that
8 Sergeant Holder did not have reasonable suspicion that Mr. Flanigan was involved in criminal
9 activity and did not have probable cause to believe that a traffic violation had occurred.

10 Mr. Flanigan alleges that Sergeant Holder targeted him for a stop that was both based on his
11 race and random. “To state a § 1983 claim for violation of the Equal Protection Clause a plaintiff
12 must show that the defendants acted with an intent or purpose to discriminate against the plaintiff
13 based upon membership in a protected class.” *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166
14 (9th Cir. 2005) (citation and internal quotation marks omitted). Mr. Flanigan’s conclusory
15 allegation that Sergeant Holder did a traffic stop because of Mr. Flanigan’s race (and,
16 inconsistently, for a random stop) is insufficient to state a plausible claim for an equal protection
17 violation. If Mr. Flanigan wishes to pursue an equal protection claim, he needs to allege facts
18 supporting his conclusion that it was his race that prompted Sergeant Holder to do the traffic stop.

19 Excessive Force: A claim that a law enforcement officer used excessive force in the course of
20 an arrest or other seizure is analyzed under the Fourth Amendment reasonableness standard. *See*
21 *Graham v. Connor*, 490 U.S. 386, 394-95 (1989); *Forrester v. City of San Diego*, 25 F.3d 804,
22 806 (9th Cir. 1994). “Determining whether the force used to effect a particular seizure is
23 ‘reasonable’ under the Fourth Amendment requires a careful balancing of “‘the nature and quality
24 of the intrusion on the individual’s Fourth Amendment interests’” against the countervailing
25 governmental interests at stake.” *Graham*, 490 U.S. at 396 (citations omitted).

26 Mr. Flanigan does not identify the particular persons who used force on him. His complaint
27 does not mention the name of any officer or other member of the police department who used
28 force on him. He refers to them as a group, and it is unclear whether that group includes all the

1 defendants. (The only claim he alleges against particular officers and sergeants is his claim that the
2 named persons “were dishonest and committed crimes such as fabrication of evidence.” (ECF No.
3 at 1 at 6.)) In his amended complaint, Mr. Flanigan must allege his excessive force claim more
4 clearly, and must link particular defendants to that claim. Mr. Flanigan must state the date on
5 which the force was used on him, and must allege facts showing the basis for liability for each
6 individual defendant. He should not refer to them as a group (e.g., “the defendants” or “the
7 officers”); rather, he should identify each involved defendant by name and, to the extent possible,
8 explain what each defendant did or failed to do that caused a violation of his constitutional rights.
9 *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (liability may be imposed on individual
10 defendant under § 1983 only if plaintiff can show that defendant proximately caused deprivation
11 of federally protected right).

12 False Arrest: Mr. Flanigan’s allegation that individual sergeants and officers fabricated
13 evidence may be an effort to allege a § 1983 claim for a false arrest. The Fourth Amendment
14 requires that an arrest be supported by probable cause. An arrest is supported by probable cause if,
15 under the totality of the circumstances known to the arresting officer, a prudent person would have
16 concluded that there was a fair probability that the defendant had committed a crime. *Luchtel v.*
17 *Hagemann*, 623 F.3d 975, 979 (9th Cir. 2010). If he wishes to pursue a claim for false arrest, Mr.
18 Flanigan must allege in his amended complaint that there was not probable cause for the officers
19 to arrest him. He needs to allege facts showing what each defendant did or failed to do that caused
20 the false arrest, and should explain what evidence was “fabricated” by each defendant.²

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² Mr. Flanigan is cautioned that if he was convicted as a result of the arrest, or if criminal charges are still pending as a result of the arrest, a false arrest claim may be precluded by the *Heck* rule. The *Heck* rule prevents a person from challenging his criminal prosecution in a § 1983 action if he suffered a conviction that is still in place, or if the criminal charges are still pending. *See Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994); *see also Wallace v. Kato*, 549 U.S. 384, 393-94 (2007) (if criminal case is still pending, the § 1983 action should be stayed rather than dismissed if *Heck* rule otherwise applies).

1 Municipal defendants: Mr. Flanigan lists the San Francisco Police Department as a defendant,
2 but the complaint has no allegations against that defendant. There is no respondeat superior
3 liability under § 1983, i.e. no liability under the theory that one is responsible for the actions or
4 omissions of another, such as an employee. *See Board of Cty. Comm'rs. of Bryan Cty. v. Brown*,
5 520 U.S. 397, 403 (1997). A claim is not stated against the San Francisco Police Department
6 merely because it employed the persons who allegedly violated Mr. Flanigan's rights.

7 A municipal defendant is not completely immune from § 1983 liability, however. Local
8 government entities, such as the San Francisco Police Department or the City and County of San
9 Francisco, are "persons" subject to liability under 42 U.S.C. § 1983 where official policy or
10 custom causes a constitutional tort. *See Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978).
11 To impose municipal liability under § 1983 for a violation of constitutional rights, a plaintiff must
12 show: "(1) that [the plaintiff] possessed a constitutional right of which [he] was deprived; (2) that
13 the municipality had a policy; (3) that this policy amounts to deliberate indifference to the
14 plaintiff's constitutional right; and (4) that the policy is the moving force behind the constitutional
15 violation." *See Plumeau v. School Dist. #40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997)
16 (citations and internal quotation marks omitted). For municipal liability, a plaintiff must plead
17 sufficient facts regarding the specific nature of the alleged policy, custom or practice to allow the
18 defendant to effectively defend itself, and these facts must plausibly suggest that the plaintiff is
19 entitled to relief. *See AE v. County of Tulare*, 666 F.3d 631, 636-37 (9th Cir. 2012). It is not
20 sufficient to merely allege that a policy, custom or practice existed or that individual officers'
21 wrongdoing conformed to a policy, custom or practice. *See id.* at 636-68.

22 Finally, Mr. Flanigan should include a prayer for relief in his amended complaint specifying if
23 he wants money damages, injunctive relief and/or declaratory relief. If he wants injunctive relief,
24 he needs to specify the injunctive relief he seeks. Mr. Flanigan's complaint requests that attempted
25 murder charges be filed against the defendants. (ECF No. 1 at 3.) Such relief is beyond the scope
26 of relief available from this court, because the court does not make or direct prosecutorial
27 decisions.
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1 **CONCLUSION**

2 For the foregoing reasons, the complaint is **DISMISSED WITH LEAVE TO AMEND**. The
3 amended complaint must be filed no later than **April 1, 2016**, and must include the caption and
4 civil case number used in this order and the words AMENDED COMPLAINT on the first page.
5 Mr. Flanigan is cautioned that his amended complaint will supersede existing pleadings and must
6 be a complete statement of his claims, except that he does not need to plead again any claim the
7 court has dismissed without leave to amend. *See Lacey v. Maricopa County*, 693 F.3d 896, 928
8 (9th Cir. 2012) (en banc). Failure to file the amended complaint by the deadline will result in the
9 dismissal of the action for failure to state a claim.

10 **IT IS SO ORDERED.**

11 Dated: February 25, 2016

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14 LAUREL BEELER
15 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIE M. FLANIGAN,
Plaintiff,

v.

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Case No. 3:16-cv-00066-LB

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 February 25, 2016, 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.

Willie M. Flanigan ID: #1077777
300 Bradford Street
Redwood City, CA 94063

Dated: February 25, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable LAUREL BEELER