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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LOTU T. OSOTONU,
Plaintiff,
v.
AMERICAN CANYON POLICE
DEPARTMENT,
Defendant.

Case No. [17-cv-02437-MEJ](#)**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, an inmate at the Napa County Jail, has filed a pro se civil rights action under 42 U.S.C. § 1983. He is granted leave to proceed *in forma pauperis* by separate order. His complaint is now before the Court for review under 28 U.S.C. § 1915A.

DISCUSSION**A. Standard of Review**

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity, or from an officer or an employee of a governmental entity. 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* 28 U.S.C. § 1915A(b) (1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the statement need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93

1 (2007) (citations omitted). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment]’
2 to relief” requires more than labels and conclusions, and a formulaic recitation of the elements of a
3 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above
4 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
5 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its
6 face.” *Id.* at 570.

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a
8 right secured by the Constitution or laws of the United States was violated; and (2) that the
9 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.
10 42, 48 (1988).

11 **B. Legal Claims**

12 Plaintiff alleges that on March 3, 2017, American Canyon Police Department Officer
13 Linchall used excessive force on him when Officer Linchall approached Plaintiff’s car, falsely
14 claimed that Plaintiff smelled of alcohol, and then, violently and without cause, handcuffed
15 Plaintiff, fracturing his wrist. Dkt. No. 1 (“Compl.”) at 3. Plaintiff’s allegation that Officer
16 Linchall used excessive force in effectuating his arrest states a valid claim under 42 U.S.C. § 1983.
17 *See Rutherford v. City of Berkeley*, 780 F.2d 1444, 1445–48 (9th Cir. 1986), *overruled on other*
18 *grounds by Graham v. Connor*, 490 U.S. 386 (1989) (allegation of use of excessive force by law
19 enforcement officer in effectuating an arrest states valid § 1983 claim for violation of substantive
20 due process).

21 Plaintiff further alleges that Officer Linchall, and American Canyon Police Department
22 officers Snyder and Swartz, and Napa Police Department Officer Hunter, have subjected him to
23 discrimination, racial profiling, and stereotyping. Compl. at 4. These allegations are insufficient
24 to state a § 1983 claim for the following reasons.

25 First, it is unclear what constitutional right or federal law was violated. A section 1983
26 plaintiff bears the burden of pleading and proving two essential elements: (1) conduct that
27 deprived the plaintiff of a right, privilege, or immunity protected by the Constitution or laws of the
28 United States; and (2) the alleged deprivation was committed by a person acting under the color of

1 state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988). Discriminatory practices can violate the
2 Equal Protection Clause. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985)
3 (“The Equal Protection Clause of the Fourteenth Amendment commands that no State shall ‘deny
4 to any person within its jurisdiction the equal protection of the laws,’ which is essentially a
5 direction that all persons similarly situated should be treated alike.”) (quoting *Plyler v. Doe*, 457
6 U.S. 202, 216 (1982). “To state a claim under 42 U.S.C. § 1983 for a violation of the Equal
7 Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted
8 with an intent or purpose to discriminate against the plaintiff based upon membership in a
9 protected class,” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998), such as race,
10 *Washington v. Davis*, 426 U.S. 229, 239 (1976) (“The central purpose of the Equal Protection
11 Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the
12 basis of race.”).

13 Second, these allegations fail to meet to pleading requirements set forth in Rule 8 of the
14 Federal Rules of Civil Procedure. Rule 8 requires that the complaint to contain “a short and plain
15 statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2).
16 While detailed factual allegations are not required, *Twombly*, 550 U.S. at 555, “[t]hreadbare
17 recitals of the elements of a cause of action, supported by mere conclusory statements, do not
18 suffice,” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff fails to specify what alleged
19 unconstitutional and discriminatory acts were committed by Defendants.

20 Because it appears possible that Plaintiff may be able to correct the identified deficiencies,
21 the Court will grant Plaintiff another opportunity to plead this claim, and DISMISSES this claim
22 with leave to amend to correct the identified deficiencies, if Plaintiff can truthfully do so. *Lopez v.*
23 *Smith*, 203 F.3d 1122, 1127–29 (9th Cir. 2000) (if court determines pleading could be cured by
24 allegation of other facts, *pro se* litigant entitled to opportunity to amend complaint before
25 dismissal of action). If Plaintiff chooses to replead this claim, he must allege sufficient factual
26 details relevant to this claim against each Defendant to “state a claim to relief that is plausible on
27 its face.” *Twombly*, 550 U.S. at 570. For example, Plaintiff should specify when the
28 constitutional violation took place, and how each specific defendant caused the alleged

1 constitutional violation.

2 Finally, Plaintiff has also listed the American Canyon Police Department (“ACPD”) as a
3 defendant. Compl. at 2. It is unclear whether this is a typographical error as Plaintiff has made no
4 allegations regarding actions taken or not taken by the ACPD. The ACPD is DISMISSED from
5 this action with leave to amend. If Plaintiff intends to sue the ACPD, he must specify how the
6 ACPD violated his rights under the federal Constitution or federal law. The ACPD cannot be held
7 liable under § 1983 simply on the theory it is responsible for the actions or omissions of its
8 employees. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). To impose municipal
9 liability under § 1983 for a violation of constitutional rights, a plaintiff must show: (1) that the
10 plaintiff possessed a constitutional right of which he or she was deprived; (2) that the municipality
11 had a policy; (3) that this policy amounts to deliberate indifference to the plaintiff’s constitutional
12 rights; and (4) that the policy is the moving force behind the constitutional violation. *See Plumeau*
13 *v. School Dist. # 40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997).

14 CONCLUSION

15 For the foregoing reasons, the Court DISMISSES the complaint with leave to amend to
16 address the deficiencies identified above. Within twenty-eight (28) days of the date of this order,
17 Plaintiff shall file an amended complaint. The amended complaint must include the caption and
18 civil case number used in this order, Case No. C 17-02437 MEJ (PR) and the words “AMENDED
19 COMPLAINT” on the first page. If using the court form complaint, Plaintiff must answer all the
20 questions on the form in order for the action to proceed. Because an amended complaint
21 completely replaces the previous complaints, Plaintiff must include in his amended complaint all
22 the claims he wishes to present, including the excessive force claim which the Court has found
23 cognizable, and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258,
24 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the prior complaint by
25 reference.

26 Failure to file an amended complaint in accordance with this order in the time provided
27 will result in dismissal of this action without further notice to Plaintiff.

28 The Clerk shall include two copies of the court’s form complaint with a copy of this order

1 to Plaintiff.

2 **IT IS SO ORDERED.**

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4 Dated: July 14, 2017

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MARIA-ELENA JAMES
United States Magistrate Judge