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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MALDONADO ULTIMINO
HERNANDEZ,

Plaintiff,

vs.

MARIN COUNTY SHERIFF's DEPT., et
al.,

Defendants.

No. C 12-06406 EJD (PR)

ORDER OF DISMISSAL WITH LEAVE
TO AMEND

Plaintiff, a federal detainee, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed in forma pauperis will be granted in a separate written order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in 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 that are frivolous, malicious, fail to state a

1 claim upon which relief may be granted or seek monetary relief from a defendant who is
2 immune from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be
3 liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.
4 1988).

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

9 **B. Plaintiff's Claims**

10 Plaintiff alleges that Marin County Sheriff's Officers while investigating a theft of
11 tools illegally searched his house and removed various tools. Plaintiff states he was
12 falsely accused of possessing the tools, though no charges were filed as he was taken into
13 custody by Immigrations and Customs Enforcement for being in the U.S. illegally. The
14 Marin County Sheriffs then turned the tools over to the San Pablo Police Department and
15 Plaintiff alleges his wife was never able to obtain the property from the authorities as she
16 was never properly informed that the property was subject to forfeiture. Plaintiff names
17 the various Sheriff's and Police Departments and 100 Doe Defendants, but fails to identify
18 any specific individuals. He seeks money damages. The complaint will be dismissed
19 with leave to amend for Plaintiff to identify the specific named Defendants as the entire
20 Sheriff or Police Department is not a proper Defendant. Plaintiff must also specifically
21 describe how each individual violated his Constitutional rights. To the extent Plaintiff is
22 attempting to bring a Monell claim, he must provide more than simple conclusory
23 allegations.

24 Liability may be imposed on an individual defendant under 42 U.S.C. § 1983 if the
25 plaintiff can show that the defendant proximately caused the deprivation of a federally
26 protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of
27 Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a
28 constitutional right within the meaning of section 1983 if he does an affirmative act,

1 participates in another's affirmative act or omits to perform an act which he is legally
2 required to do, that causes the deprivation of which the plaintiff complains. See Leer, 844
3 F.2d at 633¹; see, e.g., Robins v. Meecham, 60 F.3d 1436, 1442 (9th Cir. 1995) (prison
4 official's failure to intervene to prevent 8th Amendment violation may be basis for
5 liability). Even at the pleading stage, "[a] plaintiff must allege facts, not simply
6 conclusions, that show that an individual was personally involved in the deprivation of his
7 civil rights." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

8 Local governments are "persons" subject to liability under 42 U.S.C. § 1983 where
9 official policy or custom causes a constitutional tort, see Monell v. Dep't of Social Servs.,
10 436 U.S. 658, 690 (1978);² however, a city or county may not be held vicariously liable
11 for the unconstitutional acts of its employees under the theory of respondeat superior, see
12 Board of Cty. Comm'rs. of Bryan Cty. v. Brown, 520 U.S. 397, 403 (1997); Monell, 436
13 U.S. at 691; Fuller v. City of Oakland, 47 F.3d 1522, 1534 (9th Cir. 1995). To impose
14 municipal liability under § 1983 for a violation of constitutional rights, a plaintiff must
15 show: (1) that the plaintiff possessed a constitutional right of which he or she was
16 deprived; (2) that the municipality had a policy; (3) that this policy amounts to deliberate
17 indifference to the plaintiff's constitutional rights; and (4) that the policy is the moving
18 force behind the constitutional violation. See Plumeau v. School Dist. #40 County of
19 Yamhill, 130 F.3d 432, 438 (9th Cir. 1997). Local government does not cause the alleged
20 violation, and therefore is not liable under § 1983, if it does not have the power to remedy
21 the alleged violation. See Estate of Brooks v. United States, 197 F.3d 1245, 1248-49 (9th
22 Cir. 1999) (upholding dismissal of § 1983 excessive detention claim against county

24 ¹The inquiry into causation must be individualized and focus on the duties and responsibilities
25 of each individual defendant whose acts or omissions are alleged to have caused a constitutional
26 deprivation. See Leer, 844 F.2d at 633 (citations omitted).

27 ²Local governing bodies therefore may be sued directly under § 1983 for monetary,
28 declaratory or injunctive relief for the violation of federal rights. See Monell, 436 U.S. at 690.
They are absolutely immune from liability for punitive damages under § 1983, however. See
City of Newport v. Fact Concerts, Inc., 453 U.S. 247, 271 (1981).

1 because under state statute county did not have power either to release federal detainee or
2 bring him before federal judge).

3
4 **CONCLUSION**

5 For the foregoing reasons, the Court orders as follows:

6 1. The complaint is DISMISSED with leave to amend. Within **twenty-eight (28)**
7 **days** of the date this order is filed, Plaintiff shall file an amended complaint using the
8 court's form complaint. The amended complaint must include the caption and civil case
9 number used in this order and the words "AMENDED COMPLAINT" on the first page
10 and write in the case number for this action, Case No. C 12-06406 EJD (PR). Plaintiff
11 must answer all the questions on the form in order for the action to proceed.

12 **Failure to respond in accordance with this order by filing an amended**
13 **complaint will result in the dismissal of this action without prejudice and without**
14 **further notice to Plaintiff.**

15 The Clerk shall include two copies of the court's complaint with a copy of this
16 order to Plaintiff.

17
18 DATED: 3/8/2013


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MALDONADO ULTIMINO HERNANDEZ,

Case Number CV 12-06406 EJD (PR)

Plaintiff,

CERTIFICATE OF SERVICE

vs.

MARIN COUNTY SHERIFF'S DEPT., et al.,

Defendants./

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 3/8/2013, 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) inter-office delivery receptacle located in the Clerk's office.

Maldonado Ultimino Hernandez
36736-359
P. O. Box 800079
Houston, TX 77280

DATED: 3/8/2013

Richard W. Wieking, Clerk
/s/ By: Elizabeth Garcia, Deputy Clerk