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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ERINE ROBERTSON,

Plaintiff,

v.

LOPEZ, et al.,

Defendants.

Case No. 23-cv-04030-SVK

**FURTHER SCREENING ORDER
PURSUANT TO 28 U.S.C. § 1915(E)**

On August 9, 2023, Plaintiff Erine Robertson, appearing *pro se*, filed a civil complaint concerning an alleged incident beginning on August 12, 2021 during which Plaintiff claims she was improperly arrested and detained at a hospital and two jail facilities. Dkt. 1 (“Original Complaint”). Along with the Original Complaint, Plaintiff filed a request to proceed *in forma pauperis* (“IFP”). Dkt. 2. On September 11, 2023, the Court issued an order in which it granted Plaintiff’s IFP application and found, pursuant to the Court’s initial screening review for civil action filed *in forma pauperis* under 28 U.S.C. § 1915, that the Original Complaint did not state a claim upon which the Court may grant relief. Dkt. 6 (“First Screening Order”). Specifically, the Court’s First Screening Order concluded that Plaintiff had failed to state a claim because she had not adequately identified the officers who are Defendants in this case, she had not adequately identified the relationship between the individual and entity Defendants, and she had not set forth separate causes of action that state a legal basis for each cause of action and each required element of each cause of action. *Id.* In the First Screening Order, the Court granted Plaintiff leave to amend the Original Complaint by October 11, 2023. *Id.* Upon motion by Plaintiff, the Court subsequently extended the deadline to file an amended complaint to November 15, 2023. Dkt. 9.

On November 1, 2023, Plaintiff timely filed a First Amended Complaint (“FAC”). Dkt. 10. The FAC contains additional information about the Defendants and the events that give rise to this action.

1 The Court has conducted a further screening review under 28 U.S.C. § 1915 of the FAC in
2 light of the additional information provided therein. The Court concludes that although the FAC
3 addresses most of the deficiencies noted in the First Screening Order, several required elements
4 remain missing. The Court grants Plaintiff **LEAVE TO FILE A SECOND AMENDED**
5 **COMPLAINT by December 15, 2023.**

6 **I. SCREENING UNDER 28 U.S.C. § 1915(e)(2)**

7 **A. Legal Standard**

8 Federal courts are required to dismiss a case filed *in forma pauperis* if the court determines
9 at any time that the action is frivolous, fails to state a claim, or is directed against a defendant who
10 is immune. 28 U.S.C. § 1915(e)(2); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en
11 banc). A “frivolous” complaint “lacks an arguable basis either in law or in fact.” *Neitzke v.*
12 *Williams*, 490 U.S. 319, 324 (1989). The Ninth Circuit has noted that Section 1915(e)(2)(B)(ii)
13 parallels the language of Federal Rule of Civil Procedure 12(b)(6). *Barren v. Harrington*, 152
14 F.3d 1193, 1194 (9th Cir. 1998). Both Rule 12(b)(6) and Section 1915(e)(2)(B) require a district
15 court to dismiss a complaint that fails to state a claim upon which relief can be granted.

16 The plaintiff’s complaint must contain “sufficient factual matter, accepted as true, to ‘state
17 a claim for relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
18 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In a Section 1915 review,
19 “[d]ismissal is proper only if it is clear that the plaintiff cannot prove any set of facts in support of
20 the claim that would entitle him to relief.” *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012)
21 (citations omitted). In its review, the Court liberally construes pro se pleadings. *Wilhelm v.*
22 *Rotman*, 680 F.3d 1113, 1121 (9th Cir. 2012).

23 **B. Failure to State a Claim**

24 The background of this case is set forth in the First Screening Order. The FAC names
25 three Defendants: Officer Lopez, the San Jose Police Department, and the Santa Clara County
26 Sheriff’s Department. FAC ¶ 2. The FAC includes additional allegations concerning the role of
27 Officer Lopez in the incidents at issue. *See, e.g., id.* ¶ 5, First Claim. The FAC also better
28 explains the relationship between the individual and entity Defendants. *See, e.g., id.* ¶ 5, First

1 Claim, Second Claim, Third Claim. The FAC also addresses the Court’s direction in the First
2 Screening Order that the causes of action should be organized by cause of action, rather than by
3 Defendant.

4 However, a critical element remains missing from the FAC. As explained in the First
5 Screening Order, local governmental entities (in this case, the San Jose Police Department and the
6 Santa County Sheriff’s Department) can be sued under 42 U.S.C. § 1983 only if the public entity
7 maintains a custom, practice, or policy that amounts to deliberate indifference to a plaintiff’s
8 constitutional rights, and the policy results in a violation of a plaintiff’s constitutional rights.
9 *Monell v. Dep’t of Soc. Servs. of N.Y.*, 436 U.S. 658, 690-91 (1978). The FAC does not contain
10 any facts suggesting that the local governmental entities named as Defendants (the San Jose Police
11 Department and the Santa County Sheriff’s Department) had such a custom, practice, or policy.

12 The Court will give Plaintiff an opportunity to file a Second Amended Complaint (“SAC”)
13 to add facts to support a *Monell* claim, if warranted. The SAC should *also* comply with the
14 following directions:

- 15 • The SAC should include all allegations contained in the FAC.
- 16 • The SAC should also include the information in the Original Complaint (which
17 does not appear to be included in the FAC) about Plaintiff’s filing of a claim with
18 the City (*see* Dkt. 1 at p. 5).
- 19 • The identification of the Santa Clara Valley Medical Center as a Defendant on the
20 Third Claim should be deleted because the FAC does not identify that entity as a
21 Defendant in the case. *See* FAC ¶ 2.

22 **II. CONCLUSION**

23 Plaintiff is directed to file a Second Amended Complaint that addresses the issues raised in
24 this order by **December 15, 2023**.

25 The Court again informs Plaintiff that the Federal Pro Se Program at the San Jose
26 Courthouse provides free information and limited-scope legal advice to pro se litigants in federal
27 civil cases. The Federal Pro Se Program is available by appointment and on a drop-in basis. The
28 Federal Pro Se Program is available at Room 2070 in the San Jose United States Courthouse

1 (Monday to Thursday 9:00 a.m.–4:00 p.m.) or by calling (408) 297-1480. In addition, the Court
2 offers a pro se handbook free of charge; a copy may be downloaded from
3 [https://cand.uscourts.gov/wp-content/uploads/2020/02/Pro_Se_Handbook_2020ed_links_12-](https://cand.uscourts.gov/wp-content/uploads/2020/02/Pro_Se_Handbook_2020ed_links_12-2021_MBB.pdf)
4 [2021_MBB.pdf](https://cand.uscourts.gov/wp-content/uploads/2020/02/Pro_Se_Handbook_2020ed_links_12-2021_MBB.pdf) or obtained from the Clerk’s office.

5 **SO ORDERED.**

6 Dated: November 15, 2023

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SUSAN VAN KEULEN
United States Magistrate Judge