

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

CORTNEY WARD,

Plaintiff,

v.

ST. LOUIS POLICE DEPARTMENT,

Defendants.

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No. 4:17-CV-1337 CDP

MEMORANDUM AND ORDER

Plaintiff, a prisoner, seeks leave to proceed in forma pauperis in this civil action under 42 U.S.C. § 1983. Having reviewed plaintiff’s financial information, the Court assesses a partial initial filing fee of \$10, which is twenty percent of his average monthly balance. *See* 28 U.S.C. § 1915(b). Additionally, the Court will require plaintiff to submit an amended complaint.

Standard of Review

Under 28 U.S.C. § 1915(e), the Court is required to dismiss a complaint filed in forma pauperis if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. To state a claim for relief, a complaint must plead more than “legal conclusions” and “[t]hreadbare recitals of the elements of a cause of action [that are] supported by mere conclusory statements.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A plaintiff must demonstrate a plausible claim for relief, which is more than a “mere possibility of misconduct.” *Id.* at 679. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 678. Determining whether a complaint states a plausible claim for relief is a

context-specific task that requires the reviewing court to draw on its judicial experience and common sense. *Id.* at 679.

When reviewing a complaint under 28 U.S.C. § 1915(e), the Court accepts the well-pled facts as true. Furthermore, the Court liberally construes the allegations.

The Complaint

On February 5, 2015, plaintiff engaged in a car chase with officers of the Metropolitan St. Louis Police Department. He crashed his car as a result. After the crash, unidentified officers pulled him from the car, handcuffed him, and shot him with a Tazer gun. He does not know the names of the officers.

Discussion

The complaint is legally frivolous because municipal departments like the Metropolitan St. Louis Police Department cannot be sued under § 1983. *Ketchum v. City of West Memphis, Ark.*, 974 F.2d 81, 82 (1992). As a result, this case is dismissible under 28 U.S.C. § 1915(e).

Plaintiff wishes to learn the names of the unidentified police officers during discovery. However, the Court cannot allow discovery to proceed unless plaintiff names a defendant who can be sued, such as any one of the individual police officers, in an amended complaint. Therefore, the Court will allow plaintiff to file an amended complaint. The Court notes that he might be able to learn the names of the police officers if he can obtain a copy of the arrest record.

Plaintiff is warned that the filing of an amended complaint replaces the original complaint, and so he must include each and every one of his claims in the amended complaint. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005). Any claims from the original complaint that are not included in the amended complaint will be considered abandoned. *Id.* Plaintiff must allege how each and every

defendant is directly responsible for the alleged harm. In order to sue defendants in their individual capacities, plaintiff must specifically say so in the complaint. If plaintiff fails to sue defendants in their individual capacities, this action may be subject to dismissal.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to proceed in forma pauperis [ECF No. 2] is **GRANTED**.

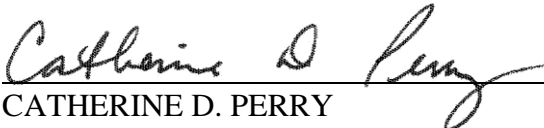
IT IS FURTHER ORDERED that the plaintiff must pay an initial filing fee of \$10 within twenty-one (21) days of the date of this Order. Plaintiff is instructed to make his remittance payable to "Clerk, United States District Court," and to include upon it: (1) his name; (2) his prison registration number; (3) the case number; and (4) that the remittance is for an original proceeding.¹

IT IS FURTHER ORDERED that the Clerk is directed to send plaintiff a prisoner civil rights complaint form.

IT IS FURTHER ORDERED that plaintiff must file an amended complaint within twenty-one (21) days of this Order.

IT IS FURTHER ORDERED that if plaintiff fails to comply with this Order, the Court will dismiss this action without further proceedings.

Dated this 19th day of April, 2017.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

¹ Prisoners must pay the full amount of the \$350 filing fee. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. The agency having custody of the prisoner will deduct the payments and forward them to the Court each time the amount in the account exceeds \$10. 28 U.S.C. § 1915(b)(2).