

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

WILLIAM GRANVILLE SMITH, Plaintiff,
No. 2:14-CV-0775-KJM-CMK-P

FINDINGS AND RECOMMENDATIONS

B. AUBUCHON, et al.,
Defendant

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's amended complaint (Doc. 16).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See *McHenry v. Renne*,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
4 allege with at least some degree of particularity overt acts by specific defendants which support
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

8 Plaintiff names the following as defendants: B. Aubuchon, M. James, and the
9 Rancho Cordova Police Department. Plaintiff seeks damages for excessive force.

10 The court finds that plaintiff's allegations are insufficient to state a claim against
11 the Rancho Cordova Police Department, as explained below.¹

12 As with plaintiff's original complaint, while plaintiff names the Rancho Cordova
13 Police Department as a defendant, he has not alleged sufficient facts to state a claim against a
14 municipal entity. Municipalities and other local government units are among those "persons" to
15 whom § 1983 liability applies. See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690 (1978).
16 Counties and municipal government officials are also "persons" for purposes of § 1983. See id.
17 at 691; see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989). A local
18 government unit, however, may not be held responsible for the acts of its employees or officials
19 under a respondeat superior theory of liability. See Bd. of County Comm'r's v. Brown, 520 U.S.
20 397, 403 (1997). Thus, municipal liability must rest on the actions of the municipality, and not
21 of the actions of its employees or officers. See id. To assert municipal liability, therefore, the
22 plaintiff must allege that the constitutional deprivation complained of resulted from a policy or
23 custom of the municipality. See id. A claim of municipal liability under § 1983 is sufficient to
24 withstand dismissal even if it is based on nothing more than bare allegations that an individual

25 ¹ By separate order, the court will authorize service of this action on defendants
26 Aubuchon and James.

1 defendant's conduct conformed to official policy, custom, or practice. See Karim-Panahi v. Los
2 Angeles Police Dep't, 839 F.2d 621, 624 (9th Cir. 1988).

3 In this case, plaintiff's asserts that the Rancho Cordova Police Department is
4 liable for the conduct of its officers, Aubuchon and James. Plaintiff does not allege any actions
5 of the municipality, such as a custom or policy. It thus appears that, despite the court's prior
6 guidance on this matter, plaintiff is unable to state a claim against the Rancho Cordova Police
7 Department, which should be dismissed as a defendant to this action.

8 Because it does not appear possible that the deficiencies identified herein can be
9 cured by further amending the complaint, plaintiff is not entitled to leave to amend prior to
10 dismissal of the Rancho Cordova Police Department as a defendant to this action. See Lopez v.
11 Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

12 Based on the foregoing, the undersigned recommends that the Rancho Cordova
13 Police Department be dismissed and that this action proceed as against defendants Aubuchon and
14 James only.

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
17 after being served with these findings and recommendations, any party may file written
18 objections with the court. Responses to objections shall be filed within 14 days after service of
19 objections. Failure to file objections within the specified time may waive the right to appeal.
20 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

21
22 DATED: May 21, 2015

23 
24 CRAIG M. KELLISON
25 UNITED STATES MAGISTRATE JUDGE
26