

Appendix A

- Ninth Circuit Court, Order – September 19 2019; Mandate – Oct. 08 2019; Police Chief Niel Gallucci , case No. 19–55687
- Ninth Circuit Court, Order – September 16 2019; Mandate– Oct. 08 2019; Department of Motor Vehicle and Legal Division, case NO. 19–55587

Appendix B

- United States District Court, opinions of the United States magistrate judge. 14.1(i) civil action No. 18cv2593–JLS(KSC); April/24/2019 judgement in a civil case;
- United States District Court, opinions of the United States magistrate judge. 14.1(i) civil action No. 18cv2683–JLS(KSC) April /24/2019; Judgement in a civil case.
- Mail tampering caused the non delivery of the first two Summary Judgements to the district court, not to be received by the district court clerk's office. The third Summary Judgement I addressed to the District court clerk manager and filed 3/13/19, over a month before the case was dismissed 4/24
- Certified Receipts for appeal document; both mailed May 20, and received on May 22.
 - Receipts for mailing appeals packages dated May 20th ; return receipts confirming deliveries were dated May 22 .
 - The Superior Court Central division mailed DMV appeal documents but Superior Court Central division security held back Gallucci's appeal documents; and required remailing by petitioner
 - Gallucci's second mailing of the appeal package,
 - Briefs Mailed on both defendants
 - Certified Mail receipt, no return receipt was received
- "Report of Clerks Pursuant to low number rule" combining the two cases, some clerks refused to follow the judges' order.attached in appendix [B]
- complaint form from Carlsbad police department, and a letter was delivered by me to Carlsbad police department, date 2/16/16 before .
- A n email of communications before I filed my Complaint, for Civil Right

Violations and Neglegence, at the United States District Court, against Police Chief Galucci and Jean Shiimoto; Racially motivated Harrassment and Discrimination by Carlsbad police department and residents of Carlsbad. The letter that was attached to the original complaint filed with the United States District Court.

Appendix C

- United States Court of Appeals, Superior Court of California, County of San Diego, North County Division, 325 S Melrose Dr, Vista CA., 92081, The Appeal of a DUI; false charges; Racially motivated charges of the DUI by Carlsbad police department. attached as background on the cases; conviction was overturned, Supporting petition for dismissal order Granted August 17, 2018.

Appendix D

United States Superior Court, DUI Trial, Criminal Division, 325 S Melrose Dr, Vista CA., 92081, verdict of guilty was entered, for DUI. Document (attached as background on the case).

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 08 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WINNIE DIGGS,

Plaintiff - Appellant,

v.

NEIL GALLUCCI, Chief, Carlsbad
Police Department, 2560 Orion Way,
Carlsbad, San Diego County, San Diego,
CA 92010,

Defendant - Appellee.

No. 19-55687

D.C. No. 3:18-cv-02683-JLS-KSC
U.S. District Court for Southern
California, San Diego

MANDATE

The judgment of this Court, entered September 16, 2019, takes effect this
date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Nixon Antonio Callejas Morales
Deputy Clerk
Ninth Circuit Rule 27-7

Attachment A

(Docket Entry No. 5) and dismiss this appeal as frivolous, pursuant to 28 U.S.C.

§ 1915(e)(2).

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 16 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WINNIE DIGGS,

Plaintiff-Appellant,

v.

NEIL GALLUCCI, Chief, Carlsbad Police
Department, 2560 Orion Way, Carlsbad, San
Diego County, San Diego, CA 92010,

Defendant-Appellee.

No. 19-55687

D.C. No.

3:18-cv-02683-JLS-KSC

Southern District of California,
San Diego

ORDER

Before: WARDLAW, NGUYEN, and HURWITZ, Circuit Judges.

A review of the record and the opening brief submitted on August 1, 2019 demonstrates that this court lacks jurisdiction over this appeal because the June 11, 2019 notice of appeal was not filed within 30 days after the district court's judgment entered on April 24, 2019. *See* 28 U.S.C. § 2107(a); *United States v. Sadler*, 480 F.3d 932, 937 (9th Cir. 2007) (requirement of timely notice of appeal is jurisdictional). Consequently, this appeal is dismissed for lack of jurisdiction.

All pending motions are denied as moot.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 11 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WINNIE DIGGS,

Plaintiff - Appellant,

v.

JEAN SHIOMOTO, Director
Department of Motor Vehicle,

Defendant - Appellee,

and

LEGAL DIVISION DEPARTMENT
OF MOTOR VEHICLE,

Defendant.

No. 19-55587

D.C. No. 3:18-cv-02593-JLS-KSC
U.S. District Court for Southern
California, San Diego

MANDATE

The judgment of this Court, entered September 19, 2019, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Nixon Antonio Callejas Morales
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

SEP 19 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WINNIE DIGGS,

Plaintiff-Appellant,

v.

JEAN SHIOMOTO, Director Department of
Motor Vehicle,

Defendant-Appellee,

and

LEGAL DIVISION DEPARTMENT OF
MOTOR VEHICLE,

Defendant.

No. 19-55587

D.C. No. 3:18-cv-02593-JLS-KSC
Southern District of California,
San Diego

ORDER

Before: FARRIS, TASHIMA, and NGUYEN, Circuit Judges.

The district court certified that this appeal is not taken in good faith and revoked appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On May 29, 2019 the court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the response to the court's May 29, 2019 order, and the opening brief received on July 22, 2019, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis



United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Winnie Diggs

Plaintiff,

V.

Chief Neil Gallucci, Carlsbad Police
Department, 2560 Orion Way, Carlsbad,
San Diego County, San Diego, CA 92010

Defendant.

Civil Action No. 18cv2683-JLS(KSC)

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

The Amended Complaint is dismissed with prejudice pursuant to 28 USC 1915(c)(2). The motion for summary judgment is denied as moot.

Date: 4/24/19

CLERK OF COURT
JOHN MORRILL, Clerk of Court
By: s/ J. Petersen

J. Petersen, Deputy

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Attachment B

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 WINNIE DIGGS,

12 Plaintiff,

13 v.

14 CHIEF NEIL GALLUCCI, Carlsbad
15 Police Department,

16 Defendant.
17
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Case No.: 18-CV-2683 JLS (KSC)

**ORDER: (1) *SUA SPONTE*
DISMISSING WITH PREJUDICE
AMENDED COMPLAINT
PURSUANT TO 28 U.S.C.
§ 1915(e)(2), AND (2) DENYING
AS MOOT MOTION FOR
SUMMARY JUDGMENT**

(ECF Nos. 9, 11)

19 **I. PROCEDURAL HISTORY**

20 Plaintiff Winnie Diggs, proceeding *pro se*, filed this action pursuant to 42 U.S.C.
21 § 1983 against Neil Gallucci, Chief of the Carlsbad Police Department, on November 28,
22 2018. See ECF No. 1. She also filed a motion for leave to proceed *in forma pauperis*
23 (“IFP”) pursuant to 28 U.S.C. § 1915(a). See ECF No. 2.

24 Although the Court granted Ms. Diggs’ request to proceed IFP, it *sua sponte*
25 dismissed without prejudice Ms. Diggs’ initial complaint for failure to state a claim
26 pursuant to 28 U.S.C. § 1915(e)(2) on February 7, 2019. See ECF No. 8. The Court
27 concluded that “Plaintiff d[id] not provide sufficient facts to allege conduct that deprived
28 her of a right, privilege, or immunity protected by the Constitution.” *Id.* at 5. Further, her

1 “When there are well-pleaded factual allegations, a court should assume their
2 veracity, and then determine whether they plausibly give rise to an entitlement of relief.”
3 *Iqbal*, 556 U.S. at 679. “[W]hen determining whether a complaint states a claim, a court
4 must accept as true all allegations of material fact and must construe those facts in the light
5 most favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see*
6 *also Andrews v. King*, 393 F.3d 1113, 1121 (9th Cir. 2005); *Barren v. Harrington*, 152
7 F.3d 1193, 1194 (9th Cir. 1998) (“The language of § 1915(e)(2)(B)(ii) parallels the
8 language of Federal Rule of Civil Procedure 12(b)(6).”).

9 “While factual allegations are accepted as true, legal conclusions are not.” *Hoagland*
10 *v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at *3 (E.D. Cal. June 28, 2012)
11 (citing *Iqbal*, 556 U.S. at 678). Courts cannot accept legal conclusions set forth in a
12 complaint if the plaintiff has not supported her contentions with facts. *Id.* (citing *Iqbal*,
13 556 U.S. at 679).

14 In addition, courts have a duty to construe a *pro se* litigant’s pleadings liberally, *see*
15 *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988), a duty that is
16 “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th
17 Cir. 1992). In giving liberal interpretation to a *pro se* civil rights complaint, however, a
18 court may not “supply essential elements of claims that were not initially pled.” *Ivey v.*
19 *Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). The district court
20 should grant leave to amend if it appears “at all possible that the plaintiff can correct the
21 defect,” unless the court determines that “the pleading could not possibly be cured by the
22 allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en
23 banc).

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1 **B. Factual Allegations¹**

2 Ms. Diggs was a homeless, 63-year-old black woman who was living in Carlsbad,
3 California, at the time of the actions underlying her Amended Complaint. *See* ECF No. 9
4 (“FAC”) at 7. Although the timeline is not entirely clear, Ms. Diggs appears to allege that
5 she began to suffer harassment from the police beginning in approximately September
6 2015. *See id.*; *see also id.* at 5. She believes that the police began following her and, as a
7 result of their stalking her, she received a dozen citations, whereas she previously had none.
8 *See id.* at 7.

9 In February 2016, Ms. Diggs was falsely arrested for driving under the influence.
10 *Id.* at 7, 9. Ms. Diggs was not driving, but rather sitting in her parked car at the time of the
11 incident. *Id.* at 7. Consequently, Ms. Diggs believes that the officers fabricated her arrest
12 report. *See id.* at 5. While Ms. Diggs was awaiting trial, mechanics in Carlsbad
13 “deliberately put [her Volvo] in disrepair.” *Id.* at 5, 7. Ms. Diggs’ \$1800 computer was
14 also stolen, *id.* at 7–8, which contained her personal and other intellectual properties,
15 including a valuable business plan. *Id.* at 9. Four other computers have gone missing. *Id.*
16 at 5.

17 In April 2016, Ms. Diggs “received a cleared license,” but the DMV failed to remove
18 the suspension of her license in their system. *Id.* at 8. Consequently, after Ms. Diggs
19 purchased a Hyundai on June 1, 2017, to replace her Volvo so that she could take an
20 assignment with the L.A. Census Bureau in California City, California, her Hyundai was
21 towed on June 14, 2017, for driving on a suspended license and an expired vehicle
22 registration. *Id.* The DMV later confirmed that Ms. Diggs had until September 8, 2017,
23 to register the Hyundai, *id.*, and a judge dismissed both charges in July 2017. *Id.* at 8, 14.

24 Beginning in late 2017, Ms. Diggs began to experience attacks by use of a laser and
25 electronic shocks perpetrated by dozens of people everywhere she went, including the
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28 ¹ The Court accepts as true all material allegations in the FAC and construes the FAC and all reasonable
inferences drawn from it in the light most favorable to Ms. Diggs. *See Resnick*, 213 F.3d at 447.

1 police. *See id.* at 4–5, 7. She experiences hundreds of attacks each day, which cause her
2 pain and suffering. *Id.* Ms. Diggs believes that she has been targeted for writing to
3 government and local officials, thereby exposing a current climate of racism and
4 discrimination. *Id.* at 5, 7. Ms. Diggs first began writing to government officials in 2015,
5 after which her Apple Air Book computer was repeatedly hacked. *Id.* at 9. Somebody has
6 been interfering with Ms. Diggs’ correspondence, which often never reaches its intended
7 recipients. *See id.* at 5, 12–13.

8 **C. Analysis**

9 Liberally construing Ms. Diggs’ First Amended Complaint, the Court must conclude
10 that (1) Ms. Diggs has failed to state a plausible claim for relief under Section 1983 against
11 Chief Gallucci pursuant to Section 1915(e)(2)(B)(ii), (2) Ms. Diggs’ Section 1983 claims
12 are time-barred and therefore frivolous under Section 1915(e)(2)(B)(i), and (3) Ms. Diggs’
13 timely claims are implausible and therefore frivolous under Section 1915(e)(2)(B)(i). The
14 Court also concludes that further amendment would be futile.

15 **1. Failure to State a Claim**

16 Ms. Diggs purports to assert her claims against Chief Gallucci under 42 U.S.C.
17 § 1983.² *See* FAC at 3. Ms. Diggs fails to state a plausible claim for relief.

18 “Section 1983 creates a private right of action against individuals who, acting under
19 color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*,
20 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of substantive
21 rights, but merely provides a method for vindicating federal rights elsewhere conferred.”
22 *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (internal quotation marks and citations
23 omitted). “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a
24 right secured by the Constitution and laws of the United States, and (2) that the deprivation
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26 ² Ms. Diggs also purports to assert her claims under *Bivens v. Six Unknown Names Agents of Federal*
27 *Bureau of Narcotics*, 403 U.S. 388 (1971). As made clear by the form Ms. Diggs used, however, *Bivens*
28 claims may be asserted only against federal officials. *See* FAC at 3. Because the Carlsbad Police
Department is a city entity and Chief Gallucci is a city official, the Court addresses only Ms. Diggs’ claims
under Section 1983.

1 was committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*,
2 698 F.3d 1128, 1138 (9th Cir. 2012). A person “acts under color of state law [for purposes
3 of section 1983] only when exercising power ‘possessed by virtue of state law and made
4 possible only because the wrongdoer is clothed with the authority of state law.’” *Polk*
5 *Cnty. v. Dodson*, 454 U.S. 312, 317–18 (1981) (quoting *United States v. Classic*, 313 U.S.
6 299, 326 (1941)). “Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff
7 must plead that each government-official defendant, through the official’s own individual
8 actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676; *see also Jones v. Cmty.*
9 *Redev. Agency of City of L.A.*, 733 F.2d 646, 649 (9th Cir. 1984) (even *pro se* plaintiffs
10 must “allege with at least some degree of particularity overt acts which defendants engaged
11 in” to state a claim).

12 Here, even assuming Ms. Diggs can state a plausible claim for deprivation of a right
13 secured by the Constitution, her First Amended Complaint contains no specific factual
14 allegations directly related to Chief Gallucci, much less any details as to what Chief
15 Gallucci did, or failed to do, to violate Plaintiff’s constitutional rights. *Iqbal*, 556 U.S. at
16 678 (noting that Rule 8 “demands more than an unadorned, the-defendant-unlawfully-
17 harmed-me accusation,” and that “[t]o survive a motion to dismiss, a complaint must
18 contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible
19 on its face’”) (quoting *Twombly*, 550 U.S. at 555, 570). The Court previously granted
20 Ms. Diggs leave to amend to remedy this deficiency, but Ms. Diggs’ First Amended
21 Complaint contains fewer allegations concerning Chief Gallucci than Ms. Diggs’ original
22 Complaint. Consequently, although this deficiency could in theory be cured, it appears
23 unlikely that Ms. Diggs will clear this pleading hurdle.

24 2. Statute of Limitations

25 The Court next determines that Ms. Diggs’ Section 1983 claims, as they relate to
26 Chief Gallucci and (although not separately named) the Carlsbad Police Department,
27 cannot be cured because they are time-barred as evident from the face of Ms. Diggs’ First
28 Amended Complaint. “In determining the proper statute of limitations for actions brought

1 under 42 U.S.C. § 1983, [federal courts] look to the statute of limitations for personal injury
2 actions in the forum state.” *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004) (citing
3 *Azer v. Connell*, 306 F.3d 930, 935 (9th Cir. 2002)). Although the nature of Ms. Diggs’
4 claims against Chief Gallucci or the Carlsbad Police Department arising under Section
5 1983 are far from clear, the statute of limitations would be, at most, two years. *See* Cal.
6 Civ. Proc. Code § 335.1.

7 Here, the underlying false arrest for driving under the influence occurred in February
8 2016. *See* FAC at 9. Accordingly, the statute of limitations for any claims against the
9 Carlsbad Police Department or its officers pertaining to the February 2016 false arrest ran
10 by February 2018. Ms. Diggs’ claims, not filed until November 2018, *see generally* ECF
11 No. 1, are therefore time-barred.

12 3. Implausibility

13 To the extent Ms. Diggs’ claims are predicated upon continued harassment, stalking,
14 and electrical or laser torture by officers of the Carlsbad Police Department, the Court
15 concludes that such allegations, while perhaps not time-barred, are “fantastic or delusional”
16 and therefore properly subject to dismissal as factually frivolous under Section
17 1915(e)(2)(B)(i). *See Neitzke v. Williams*, 490 U.S. 319, 327–28 (indicating that claims
18 may be factually frivolous when their “factual contentions are clearly baseless,” such as
19 “claims describing fantastic or delusional scenarios”); *see also Carroll v. Price*, No. 1:17-
20 CV-01312-BAM, 2018 WL 2047091, at *2 (E.D. Cal. May 2, 2018) (recommending
21 dismissal where “Plaintiff’s allegations of an implanted computer chip and battery pack
22 and a control center announcer torturing him, controlling him and using him to control the
23 weather and minds around the world appear to be grounded in delusion, are factually
24 irrational and wholly incredible”); *Thomas v. Bush*, No. 11CV2712 WQH-NLS, 2011 WL
25 6152352, at *2 (S.D. Cal. Dec. 12, 2011) (dismissing as delusional claims alleging “[t]he
26 defendants are using the [] traffic lights as cameras to follow the plaintiff around and annoy
27 her”).

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1 4. *Leave to Amend*

2 Although courts generally take a liberal approach to amendment, particularly in
3 cases prosecuted by *pro se* litigants, leave to amend is properly denied where—as here—
4 amendment would be futile. *See, e.g., Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)
5 (“[A] district court should grant leave to amend even if no request to amend the pleading
6 was made, unless it determines that the pleading could not possibly be cured by the
7 allegation of other facts.”); *Davis v. Powell*, 901 F. Supp. 2d 1196, 1222 (S.D. Cal. 2012)
8 (“Because [Plaintiff] could not plead any additional facts to cure the deficiencies in his
9 pleadings and has already been given leave to amend, he should not be given
10 further leave to amend his claims.”). Here, Ms. Diggs has already been granted leave to
11 amend her claim and she will be unable to cure the deficiencies because her claims against
12 Chief Shiimoto (and the Carlsbad Police Department and other of its employees) arising
13 from her February 2016 arrest are barred by statute of limitations. To the extent Ms. Diggs’
14 claims are not time-barred, they are implausible and frivolous. Accordingly, the Court
15 **DISMISSES WITH PREJUDICE** Ms. Diggs’ First Amended Complaint pursuant to
16 pursuant to 28 U.S.C. § 1915(e)(2).

17 **III. CONCLUSION**

18 In light of the foregoing, the Court:

- 19 1. **DISMISSES WITH PREJUDICE** Ms. Diggs’ Amended Complaint
20 pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and (ii);
21 2. **DENIES AS MOOT** Ms. Diggs’ Motion for Summary Judgment (ECF No.
22 11);
23 3. **CERTIFIES** that an *in forma pauperis* appeal from this Order would not be
24 taken in good faith pursuant to 28 U.S.C. § 1915(a)(3); and

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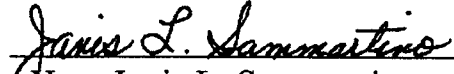
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1 4. **DIRECTS** the Clerk of the Court to enter a final judgment of dismissal and
2 close the file.

3 **IT IS SO ORDERED.**

4
5 Dated: April 24, 2019


Hon. Janis L. Sammartino
United States District Judge



United States District Court
SOUTHERN DISTRICT OF CALIFORNIA

Winnie Diggs

Plaintiff,

V.

Jean Shiimoto, Director Department of
Motor Vehicles; Legal Division
Department of Motor Vehicle

Defendant.

Civil Action No. 18cv2593-JLS(KSC)

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

The Amended Complaint is dismissed with prejudice pursuant to 28 USC 1915(c)(2). The motion for summary judgment is denied as moot.

Page 2 of Judgment in Civil Case

Date: 4/24/19

CLERK OF COURT
JOHN MORRILL, Clerk of Court
By: s/ J. Petersen

J. Petersen, Deputy

Attachment B

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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 WINNIE DIGGS,

12 Plaintiff,

13 v.

14 DEPARTMENT OF MOTOR
15 VEHIC[LES] D[I]RECTOR JEAN
16 SHIOMOTO; LEGAL DIVISION OF
17 DEPARTMENT OF MOTOR
18 VEHIC[LES],

Defendants.

Case No.: 18-CV-2593 JLS (KSC)

**ORDER: (1) *SUA SPONTE*
DISMISSING WITH PREJUDICE
AMENDED COMPLAINT
PURSUANT TO 28 U.S.C.
§ 1915(e)(2), AND (2) DENYING
AS MOOT MOTION FOR
SUMMARY JUDGMENT**

(ECF Nos. 10, 12)

19 **I. PROCEDURAL HISTORY**

20 Plaintiff Winnie Diggs, proceeding *pro se*, filed this action pursuant to 42 U.S.C.
21 § 1983 against Jean Shiomoto, Director of the Department of Motor Vehicles, and the
22 Legal Division of the Department of Motors Vehicles on November 13, 2018. *See* ECF
23 No. 1. She also filed a motion for leave to proceed *in forma pauperis* ("IFP") pursuant to
24 28 U.S.C. § 1915(a). *See* ECF No. 2.

25 After the Court denied Ms. Diggs' initial motion for leave to proceed IFP on
26 November 15, 2018, *see* ECF No. 3, Ms. Diggs filed a second motion for leave to proceed
27 IFP on December 7, 2018. *See* ECF No. 4. The Court again denied Ms. Diggs leave to
28 proceed IFP on December 12, 2018. *See* ECF No. 5.

1 On December 18, 2018, Ms. Diggs filed a third motion for leave to proceed IFP. *See*
2 ECF No. 6. Although the Court granted Ms. Diggs' request to proceed IFP, it *sua sponte*
3 dismissed without prejudice Ms. Diggs' initial complaint for failure to state a claim
4 pursuant to 28 U.S.C. § 1915(e)(2) on January 28, 2019. *See* ECF No. 9. The Court
5 concluded that "Plaintiff d[id] not provide sufficient facts to allege conduct that deprived
6 her of a right, privilege, or immunity protected by the Constitution." *Id.* at 6. Further, "she
7 d[id] not provide specific facts related to Defendants to support her claims for relief." *Id.*
8 Nonetheless, the Court granted Ms. Diggs forty-five days' leave to file an amended
9 complaint. *Id.* at 8.

10 Ms. Diggs' operative Amended Complaint followed on February 4, 2019. *See* ECF
11 No. 10. On April 9, 2019, she filed a motion for summary judgment. *See* ECF No. 12.

12 **II. SCREENING PURSUANT TO 28 U.S.C. § 1915(e)(2)**

13 **A. Standard of Review**

14 The Court must screen every civil action brought pursuant to 28 U.S.C. § 1915(a)
15 and dismiss any case it finds "frivolous or malicious," "fails to state a claim on which relief
16 may be granted," or "seeks monetary relief against a defendant who is immune from relief."
17 28 U.S.C. § 1915(e)(2)(B); *see also Coleman v. Tollefson*, __ U.S. __, 135 S. Ct. 1759,
18 1763 (2015) ("[T]he court shall dismiss the case [pursuant to 28 U.S.C. § 1915(e)(2)] at
19 any time if the court determines that—(A) the allegation of poverty is untrue; or (B) the
20 action or appeal—(i) is frivolous or malicious; [or] (ii) fails to state a claim on which relief
21 may be granted; [or] seeks monetary relief against a defendant who is immune from such
22 relief."); *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) ("[T]he provisions of 28
23 U.S.C. § 1915(e)(2)(B) are not limited to prisoners."); *Lopez v. Smith*, 203 F.3d 1122,
24 1126–27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but
25 requires a district court to dismiss an [IFP] complaint that fails to state a claim").

26 All complaints must contain a "short and plain statement of the claim showing that
27 the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
28 not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by

1 mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
2 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007)). “[D]etermining whether a
3 complaint states a plausible claim is context-specific, requiring the reviewing court to draw
4 on its experience and common sense.” *Iqbal*, 556 U.S. at 663–64 (citing *Twombly*, 550
5 U.S. at 556).

6 “When there are well-pleaded factual allegations, a court should assume their
7 veracity, and then determine whether they plausibly give rise to an entitlement of relief.”
8 *Iqbal*, 556 U.S. at 679. “[W]hen determining whether a complaint states a claim, a court
9 must accept as true all allegations of material fact and must construe those facts in the light
10 most favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000); *see*
11 *also Andrews v. King*, 393 F.3d 1113, 1121 (9th Cir. 2005); *Barren v. Harrington*, 152
12 F.3d 1193, 1194 (9th Cir. 1998) (“The language of § 1915(e)(2)(B)(ii) parallels the
13 language of Federal Rule of Civil Procedure 12(b)(6).”).

14 “While factual allegations are accepted as true, legal conclusions are not.” *Hoagland*
15 *v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at *3 (E.D. Cal. June 28, 2012)
16 (citing *Iqbal*, 556 U.S. at 678). Courts cannot accept legal conclusions set forth in a
17 complaint if the plaintiff has not supported her contentions with facts. *Id.* (citing *Iqbal*,
18 556 U.S. at 679).

19 In addition, courts have a duty to construe a *pro se* litigant’s pleadings liberally, *see*
20 *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988), a duty that is
21 “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th
22 Cir. 1992). In giving liberal interpretation to a *pro se* civil rights complaint, however, a
23 court may not “supply essential elements of claims that were not initially pled.” *Ivey v.*
24 *Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). The district court
25 should grant leave to amend if it appears “at all possible that the plaintiff can correct the
26 defect,” unless the court determines that “the pleading could not possibly be cured by the
27 allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en
28 banc).

1 **B. Factual Allegations¹**

2 Ms. Diggs was a homeless, 63-year-old black woman who was living in Carlsbad,
3 California, at the time of the actions underlying her Amended Complaint. *See* ECF No. 10
4 (“FAC”) at 10. Although the timeline is not entirely clear, Ms. Diggs appears to allege that
5 she began to suffer harassment from the police beginning in 2015. *See id.* She believes
6 that the police began following her and, as a result of their stalking her, she received a
7 dozen citations, whereas she previously had none. *See id.*

8 In February 2016, Ms. Diggs was falsely arrested for driving under the influence.
9 *Id.* at 10, 12. Ms. Diggs was not driving, but rather sitting in her parked car at the time of
10 the incident. *Id.* at 7. Ms. Diggs paid the DMV \$120 for a video that would prove she was
11 not driving at the time of her arrest, but the DMV never sent her the video. *Id.* at 10, 17.
12 Instead, the DMV sent Ms. Diggs a form requesting that she receive a mental health
13 evaluation. *Id.* at 10.

14 While Ms. Diggs was awaiting trial, mechanics in Carlsbad “deliberately put [her
15 Volvo] in disrepair.” *Id.* at 7, 11. Ms. Diggs’ \$1800 computer was also stolen, *id.* at 10–
16 11, which contained her personal and other intellectual properties, including a valuable
17 business plan. *Id.* at 12. Four other computers have gone missing. *Id.* at 8.

18 In April 2016, Ms. Diggs “received a cleared license,” *id.* at 11, but the DMV failed
19 to remove the suspension of her license in their system. *Id.* at 7. Consequently, after
20 Ms. Diggs purchased a Hyundai on June 1, 2017, to replace her Volvo so that she could
21 take an assignment with the L.A. Census Bureau in California City, California, her Hyundai
22 was towed on June 14, 2017, for driving on a suspended license and an expired vehicle
23 registration. *Id.* at 7, 11. The DMV later confirmed that Ms. Diggs had until September 8,
24 2017, to register the Hyundai, *id.* at 11, and a judge dismissed both charges in July 2017.
25 *Id.* at 11, 18.

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28 ¹ The Court accepts as true all material allegations in the FAC and construes the FAC and all reasonable
inferences drawn from it in the light most favorable to Ms. Diggs. *See Resnick*, 213 F.3d at 447.

1 Beginning in late 2017, Ms. Diggs began to experience attacks by use of a laser and
2 electronic shocks perpetrated by dozens of people everywhere she went. *See id.* at 7, 11.
3 She experiences hundreds of attacks each day, which cause her pain and suffering. *Id.*
4 Ms. Diggs believes that she has been targeted for writing to government and local officials,
5 thereby exposing a current climate of corruption, fraud, oppression, racism, and
6 discrimination. *Id.* at 12, 18; *see also id.* at 10. Ms. Diggs first began writing to
7 government officials in 2015, after which her Apple Air Book computer was repeatedly
8 hacked. *Id.* Somebody has been interfering with Ms. Diggs' correspondence, which often
9 never reaches its intended recipients. *See id.* at 16–17.

10 C. Analysis

11 Liberally construing Ms. Diggs' First Amended Complaint, the Court must conclude
12 that (1) Ms. Diggs has failed to state a plausible claim for relief under Section 1983 against
13 Department of Motor Vehicles Director Jean Shiimoto pursuant to Section
14 1915(e)(2)(B)(ii), (2) Ms. Diggs' Section 1983 claims are time-barred and therefore
15 frivolous under Section 1915(e)(2)(B)(i), and (3) Ms. Diggs seeks monetary relief against
16 those who are immune from liability under Section 1915(e)(2)(B)(iii). The Court also
17 concludes that further amendment would be futile.

18 1. Failure to State a Claim

19 Ms. Diggs purports to assert her claims against Director Shiimoto under 42 U.S.C.
20 § 1983.² *See* FAC at 3. Ms. Diggs fails to state a plausible claim for relief.

21 “Section 1983 creates a private right of action against individuals who, acting under
22 color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*,
23 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of substantive
24 rights, but merely provides a method for vindicating federal rights elsewhere conferred.”

25
26
27 ² Ms. Diggs also purports to assert her claims under *Bivens v. Six Unknown Names Agents of Federal*
28 *Bureau of Narcotics*, 403 U.S. 388 (1971). As made clear by the form Ms. Diggs used, however, *Bivens*
claims may be asserted only against federal officials. *See* FAC at 3. Because the DMV is a state entity
and Director Shiimoto is a state official, the Court addresses only Ms. Diggs' claims under Section 1983.

1 *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (internal quotation marks and citations
2 omitted). “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a
3 right secured by the Constitution and laws of the United States, and (2) that the deprivation
4 was committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*,
5 698 F.3d 1128, 1138 (9th Cir. 2012). A person “acts under color of state law [for purposes
6 of section 1983] only when exercising power ‘possessed by virtue of state law and made
7 possible only because the wrongdoer is clothed with the authority of state law.’” *Polk*
8 *Cnty. v. Dodson*, 454 U.S. 312, 317–18 (1981) (quoting *United States v. Classic*, 313 U.S.
9 299, 326 (1941)). “Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff
10 must plead that each government-official defendant, through the official’s own individual
11 actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676; *see also Jones v. Cmty.*
12 *Redev. Agency of City of L.A.*, 733 F.2d 646, 649 (9th Cir. 1984) (even *pro se* plaintiffs
13 must “allege with at least some degree of particularity overt acts which defendants engaged
14 in” to state a claim).

15 Here, even assuming Ms. Diggs can state a plausible claim for deprivation of a right
16 secured by the Constitution, Ms. Diggs’ First Amended Complaint contains no specific
17 factual allegations directly related to Director Shiimoto, much less any details as to what
18 Director Shiimoto did, or failed to do, to violate Plaintiff’s constitutional rights. *Iqbal*,
19 556 U.S. at 678 (noting that Rule 8 “demands more than an unadorned, the-defendant-
20 unlawfully-harmed-me accusation,” and that “[t]o survive a motion to dismiss, a complaint
21 must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is
22 plausible on its face’”) (quoting *Twombly*, 550 U.S. at 555, 570). The Court previously
23 granted Ms. Diggs leave to amend to remedy this deficiency, but Ms. Diggs’ First
24 Amended Complaint contains fewer allegations concerning Director Shiimoto than
25 Ms. Diggs’ original Complaint. Consequently, although this deficiency could in theory be
26 cured, it appears unlikely that Ms. Diggs will clear this pleading hurdle.

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1 2. *Statute of Limitations*

2 The Court next determines that Ms. Diggs' Section 1983 claims, as they relate to
3 Director Shiimoto and (although not separately named) the DMV, cannot be cured because
4 they are time-barred as evident from the face of Ms. Diggs' First Amended Complaint. "In
5 determining the proper statute of limitations for actions brought under 42 U.S.C. § 1983,
6 [federal courts] look to the statute of limitations for personal injury actions in the forum
7 state." *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004) (citing *Azer v. Connell*, 306
8 F.3d 930, 935 (9th Cir. 2002)). Although the nature of Ms. Diggs' claims against Director
9 Shiimoto or the DMV arising under Section 1983 are far from clear, the statute of
10 limitations would be, at most, two years. *See* Cal. Civ. Proc. Code § 335.1 (two-year statute
11 of limitations for personal injury claims).

12 Here, the underlying false arrest for driving under the influence, in which the DMV
13 was not involved, occurred in February 2016. *See* FAC at 12. Ms. Diggs' license was
14 cleared on April 2016, *see id.* at 11, meaning that any claims arising from the DMV's
15 conduct at Ms. Diggs' hearing, review, and trial occurred and accrued before that date. *See*
16 *id.* at 10. Accordingly, the statute of limitations for any claims against the DMV pertaining
17 to the February 2016 false arrest and subsequent proceedings ran by April 2018. Ms.
18 Diggs' claims, not filed until November 2018, *see generally* ECF No. 1, are therefore time-
19 barred.

20 3. *Immunity*

21 Although not alleged in her First Amended Complaint, it is also possible that
22 Ms. Diggs intended to assert a claim against Director Shiimoto (or the DMV or other of
23 its employees) for negligence under the California Tort Claims Act. Ms. Diggs alleges that
24 the DMV restored her license, but wrongfully failed to lift her suspension, in April 2016.
25 FAC at 7, 11. Construing Ms. Diggs' First Amended Complaint liberally and issues of
26 claim presentment aside, such claims are barred by immunity.

27 Under California law, neither a public entity nor a public employee may be "liable
28 for an injury caused . . . by . . . failure or refusal to issue, deny, suspend or revoke, any

1 permit, license, certificate, approval, order, or similar authorization.” Cal. Gov’t Code
2 §§ 818.4, 821.2. Here, any timely tort claim asserted by Ms. Diggs against the DMV or its
3 employees would arise from their failure fully to restore Ms. Diggs license, actions barred
4 by the statutory licensing immunity.

5 4. *Leave to Amend*

6 Although courts generally take a liberal approach to amendment, particularly in
7 cases prosecuted by *pro se* litigants, leave to amend is properly denied where—as here—
8 amendment would be futile. *See, e.g., Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)
9 (“[A] district court should grant leave to amend even if no request to amend the pleading
10 was made, unless it determines that the pleading could not possibly be cured by the
11 allegation of other facts.”); *Davis v. Powell*, 901 F. Supp. 2d 1196, 1222 (S.D. Cal. 2012)
12 (“Because [Plaintiff] could not plead any additional facts to cure the deficiencies in his
13 pleadings and has already been given leave to amend, he should not be given
14 further leave to amend his claims.”). Here, Ms. Diggs has already been granted leave to
15 amend her claim and she will be unable to cure the deficiencies because her claims against
16 Director Shiimoto (and the DMV and other of its employees) are barred by statute of
17 limitations or immunity. Accordingly, the Court **DISMISSES WITH PREJUDICE**
18 Ms. Diggs’ First Amended Complaint pursuant to 28 U.S.C. § 1915(e)(2).

19 **III. CONCLUSION**

20 In light of the foregoing, the Court:

- 21 1. **DISMISSES WITH PREJUDICE** Ms. Diggs’ Amended Complaint
22 pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i), (ii), and (iii);
- 23 2. **DENIES AS MOOT** Ms. Diggs’ Motion for Summary Judgment (ECF No.
24 12);
- 25 3. **CERTIFIES** that an *in forma pauperis* appeal from this Order would not be
26 taken in good faith pursuant to 28 U.S.C. § 1915(a)(3); and

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**Additional material
from this filing is
available in the
Clerk's Office.**