

APPENDIX-A

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 23 2021

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

SHIKEB SADDOZAI,

Plaintiff-Appellant,

v.

KRISTEN ESTERHELD, Daly City Police
Officer; et al.,

Defendants-Appellees.

No. 20-16425

D.C. No. 5:20-cv-01279-BLF
Northern District of California,
San Jose

ORDER

Before: THOMAS, Chief Judge, TASHIMA and SILVERMAN, Circuit Judges.

The district court certified that this appeal is frivolous and revoked
appellant's in forma pauperis status. *See* 28 U.S.C. § 1915(a). On August 19,
2020, 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 and the response to the court's August 19, 2020
order, we conclude this appeal is frivolous. We therefore deny appellant's motions
to proceed in forma pauperis (Docket Entry Nos. 7 and 11) and dismiss this appeal
as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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MAY 17 2021

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Plaintiff - Appellant,

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KRISTEN ESTERHELD, Daly City
Police Officer; et al.,

Defendants - Appellees.

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U.S. District Court for Northern
California, San Jose

MANDATE

The judgment of this Court, entered April 23, 2021, 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: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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SHIKEB SADDOZAI,
Plaintiff,

v.

KRISTEN ESTERHELD, et al.,
Defendants.

Case No. 20-01279 BLF (PR)

ORDER OF DISMISSAL

Plaintiff, a state prisoner, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff's motion for leave to proceed *in forma pauperis* will be addressed in a separate 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 claim upon which relief may be granted or seek monetary relief from a defendant who is immune

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

INSTRUCTIONS FOR PAYMENT OF PRISONER'S FILING FEE

The prisoner shown as the plaintiff or petitioner on the attached order has filed a civil action in forma pauperis in this court and owes to the court a filing fee. Pursuant to 28 U.S.C. § 1915, the fee is to be paid as follows:

The initial partial filing fee listed on the attached order should be deducted by the prison trust account office from the prisoner's trust account and forwarded to the clerk of the court as the first installment payment on the filing fee. This amount is twenty percent of the greater of (a) the average monthly deposits to the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition or (b) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint/petition.

Thereafter, on a monthly basis, 20 percent of the preceding month's income credited to the prisoner's trust account should be deducted and forwarded to the court each time the amount in the account exceeds ten dollars (\$10.00). The prison trust account office should continue to do this until the filing fee has been paid in full.

If the prisoner does not have sufficient funds in his/her account to pay the initial partial filing fee, the prison trust account office should forward the available funds, and carry the balance forward each month until the amount is fully paid.

If the prisoner has filed more than one complaint, (s)he is required to pay a filing fee for each case. The trust account office should make the monthly calculations and payments for each case in which it receives an order granting in forma pauperis and these instructions.

The prisoner's name and case number must be noted on each remittance. The initial partial filing fee is due **within thirty days** of the date of the attached order. Checks should be made payable to Clerk, U.S. District Court and sent to Prisoner Accounts Receivable, U.S. District Court, 450 Golden Gate Avenue, Box 36060, San Francisco, CA 94102.

cc: Plaintiff
Finance Office

1 from such relief. *See id.* § 1915A(b)(1), (2). Pro se pleadings must, however, be liberally
2 construed. *See Balistreri v. Pacifica Police Dep't.* 901 F.2d 696, 699 (9th Cir. 1988).

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

7 **B. Plaintiff's Claims**

8 Plaintiff is suing the Daly City Police Department for their actions in connection
9 with his complaints of theft and fraud by his former girlfriend, Flora Sparks. Dkt. No. 1 at
10 4. He made these complaints on or about February 3, 2016, and an investigation was
11 begun. *Id.* at 4-5. Plaintiff claims that although he provided police with a description of
12 his stolen items and Ms. Spark's known location, no arrest took place. *Id.* at 5. Plaintiff
13 claims that police "declined to make an arrest simply because Flora Sparks, and plaintiff...
14 were in a prior relationship." *Id.* Plaintiff claims their inaction amounts to deliberate
15 indifference and that they should be held liable for damages that was a result of "willful or
16 wanton act," which deprived him of his "property, obstruction of justice, denial of equal
17 protection and due process of the law, under the Fifth, and Fourteenth Amendment... and
18 protection of public safety by failing to arrest of those persons suspected of criminal
19 activity." *Id.* at 7. He seeks injunctive and declaratory relief as well as damages. *Id.* at
20 10.

21 Plaintiff fails to state a claim for relief because he cannot satisfy either element for a
22 § 1983 claim, i.e., that a constitutional or federal right was violated. The Fifth and
23 Fourteenth Amendments protect citizens from the deprivation of life, liberty, or property
24 by the federal and state governments without due process of law. However, the loss of
25 property alleged in this action was not committed by the either the federal or state
26 government but by a private citizen, i.e., Plaintiff's former girlfriend. As such, Plaintiff
27 also cannot satisfy the second element, that the alleged violation was committed by a
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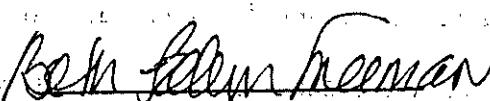
1 person acting under the color of state law. The fact that the police decided to forego
2 pursuing a criminal action against Ms. Sparks and recover Plaintiff's property for him does
3 not make them responsible for the original loss. Accordingly, the complaint must be
4 dismissed for failure to state a claim for relief. *See* 28 U.S.C. § 1915A(b)(1), (2). Because
5 it is not factually possible for plaintiff to amend the complaint so as to cure this deficiency,
6 the dismissal is without leave to amend. *See Schmier v. United States Court of Appeals*,
7 279 F.3d 817, 824 (9th Cir. 2002).

8
9 **CONCLUSION**

10 For the foregoing reasons, the complaint is **DISMISSED with prejudice** for failure
11 to state a claim for which relief can be granted.

12 **IT IS SO ORDERED.**

13 Dated: June 30, 2020



BETI LABSON FREEMAN

United States District Judge

25 Order of Dismissal
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