UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2053

Dallas Cody Hilt

Plaintiff - Appellant

v.

Chad Anderson, Sheriff, Bates County Sheriff's Department

Defendant - Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00023-RK)

JUDGMENT

Before GRUENDER, SHEPHERD, and KOBES, Circuit Judges.

The motion for leave to proceed in forma pauperis has been considered and is granted. The full $605 appellate and docketing fees are assessed against the appellant. Appellant will be permitted to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2). The court remands the calculation of the installments and the collection of the fees to the district court. Appellant's motion to use the original record is granted.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

September 03, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2053

Dallas Cody Hilt

Appellant

v.

Chad Anderson, Sheriff, Bates County Sheriff's Department

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00023-RK)

ORDER

The petition for rehearing by the panel is denied. Appellant's motion for appointment of counsel is also denied.

October 10, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2053

Dallas Cody Hilt

Appellant

v.

Chad Anderson, Sheriff, Bates County Sheriff's Department

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00023-RK)

ORDER

If the original file of the United States District Court is available for review in electronic format, the court will rely on the electronic version of the record in its review. The appendices required by Eighth Circuit Rule 30A shall not be required. In accordance with Eighth Circuit Local Rule 30A(a)(2), the Clerk of the United States District Court is requested to forward to this Court forthwith any portions of the original record which are not available in an electronic format through PACER, including any documents maintained in paper format or filed under seal, exhibits, CDs, videos, administrative records and state court files. These documents should be submitted within 10 days.

May 21, 2024

Order Entered Under Rule 27A(a):
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Stephanie N. O'Banion

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:24-cv-00023-RK-P
	)	
CHAD ANDERSON,	)	
	)	
Defendant.	)	

ORDER

Plaintiff, who currently is confined at Clay County Detention Center, has filed pro se this civil rights action pursuant to 42 U.S.C. § 1983, seeking relief for certain claimed violations of his federally protected rights. Plaintiff has been granted leave to proceed *in forma pauperis* without the prepayment of court fees or costs and has paid the initial partial filing fee.

Standard

As the Court has determined that Plaintiff does qualify to proceed *in forma pauperis*, the Court now considers whether the complaint nonetheless should be dismissed because it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *Martin-Trigona v. Stewart*, 691 F.2d 856, 857 (8th Cir. 1982) (citing 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)). More specifically, the Court "shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). A claim is frivolous if it lacks an arguable basis in fact or in law. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term "frivolous" in this context "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.*; *see also Wilson v. Johnston*, 68 Fed. Appx. 761 (8th Cir. 2003) (court may dismiss complaint proceeding *in forma pauperis* as "frivolous, and disregard clearly baseless, fanciful, fantastical, or delusional factual allegations").

In reviewing a pro se complaint at this early stage, the Court gives the complaint the benefit of every doubt, no matter how unlikely. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992). A "pro se complaint must be liberally construed, and 'pro se litigants are held to a lesser pleading standard than

other parties.'" *Whitson v. Stone Cnty. Jail*, 602 F.3d 920, 922 n.1 (8th Cir. 2010) (citations omitted). This standard, however, does not excuse pro se complaints from alleging "sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004); *see Frey v. City of Herculaneum*, 44 F.3d 667, 672 (8th Cir. 1995) (holding that *pro se* complaint fell "short of meeting even the liberal standard for notice pleading" where it was "entirely conclusory" and gave "no idea what acts the individual defendants were accused of that could result in liability").

Complaint

Plaintiff asserts an official capacity claim against sole defendant, Bates County Sheriff Chad Anderson. Doc. 1. As best as the Court can discern, Plaintiff asserts a claim relating to his arrest on June 7, 2022, by the Missouri State Highway Patrol. *Id.* at 5. Plaintiff alleges that "Bates County Sheriff's Department violated state statutes, blatantly lied, falsified documents, made illegal arrests, and caused emotional distress." *Id.* at 4. Plaintiff states no injuries were sustained. *Id.* For relief, Plaintiff seeks punitive damages in the amount of $40,000. *Id.* at 7.

Analysis

The Court must now decide whether Plaintiff meets the second prong of the *Martin-Trigona* test: whether the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii).

Official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 690 n.55 (1978)). As long as the government entity receives notice and an opportunity to respond, an official capacity suit is, in all respects other than name, to be treated as a suit against the entity. *Id.* at 166. Thus, Plaintiff's official capacity claim against Defendant is to be treated as a claim against Bates County, Missouri.

Section 1983 liability against municipalities and other local government units, however, is limited:

> Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person," by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to

> governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels.

Monell, 436 U.S. at 690-91. A municipality cannot be held liable under § 1983 on a *respondeat superior* theory. *Id.* at 691; *see also Johnson*, 172 F.3d at 535-36. Thus, for a county to be held liable under § 1983, Plaintiff must establish that "some custom or policy of the [county] was the moving force behind the constitutional violation." *Wilson v. Spain*, 203 F.3d 713, 717 (8th Cir. 2000). In other words, Plaintiff must demonstrate that the constitutional violation occurred "from action pursuant to official [county] policy of some nature." *McGautha v. Jackson Cnty. Mo., Collections Dep't*, 36 F.3d 53, 55-56 (8th Cir. 1994) (quoting *Monell*, 436 U.S. at 691). Official policy is established by a "deliberate choice to follow a course of action . . . made . . . by an official who has the final authority to establish governmental policy." *Jane Doe v. Special Sch. Dist.*, 901 F.2d 642, 645 (8th Cir. 1990) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)) (internal citation omitted). Alternatively, Plaintiff must demonstrate a "pattern of 'persistent and widespread' unconstitutional practices which became so 'permanent and well settled' as to have the effect and force of law." *Id.* at 646 (quoting *Monell*, 436 U.S. at 691). To show an unconstitutional governmental custom, Plaintiff must prove: (1) existence of a "continuing, widespread, persistent pattern of unconstitutional misconduct" by county employees; (2) "[d]eliberate indifference to or tacit authorization of such conduct by the [county]'s policymaking officials after notice to the officials of that misconduct"; and (3) injury caused by "acts pursuant to the [county]'s custom, i.e., that the custom was the moving force behind the constitutional violation." *Id.*

Liberally construing the pleadings, it is clear Plaintiff has not satisfied the pleading standard to impose § 1983 liability on Defendant. Plaintiff has failed to plead any facts to show municipal custom, usage, or policy as the driving force behind the alleged infringement upon his constitutional rights. Plaintiff's official capacity claim against Defendant is dismissed.

Even if Plaintiff had asserted individual capacity claims, Plaintiff's claims fail. "Liability under [42 U.S.C.] § 1983 requires a causal link to, and direct responsibility for, the deprivation of rights." *Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71 (1976)). Plaintiff, therefore, must present specific allegations of fact as to either direct personal involvement, direction of others, or a knowing failure to supervise or act, which resulted in Plaintiff's injuries. *See generally Mark v. Nix*, 983 F.2d 138, 139-40 (8th Cir. 1993) (§ 1983

liability requires some personal involvement or responsibility); *Ronnei v. Butler*, 597 F.2d 564 (8th Cir. 1979). Additionally, to state any claim under § 1983, Plaintiff must plead more than "threadbare recitals of a cause of action's elements, supported by mere conclusory statements." *Iqbal*, 556 U.S. at 678. To state a due process violation, Plaintiff must establish that he has been deprived of a protected liberty interest. *Persechini v. Callaway*, 651 F.3d 802, 806 (8th Cir. 2011) (citing *Sandin v. Conner*, 515 U.S. 472, 487 (1995)).

Here, Plaintiff has failed to assert any specific claims against Defendant Chad Anderson or demonstrate a causal link to, and direct responsibility for, the alleged deprivation of Plaintiff's rights. Thus, this claim fails.

Accordingly, this case is dismissed without prejudice. Plaintiff is advised that this dismissal will count against him for purposes of the three-dismissal rule set forth in 28 U.S.C. § 1915(g).

Notice Concerning $505 Appeal Fee

Plaintiff is advised that if he appeals this dismissal, in addition to the $350 filing fee, federal law now "'makes prisoners responsible for [appellate filing fees of $505] the moment the prisoner . . . files an appeal.'" *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (citation omitted). Pursuant to *Henderson*, Plaintiff is notified as follows:

> (a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full . . . appellate filing fees regardless of the outcome of the appeal; (b) by filing a notice of appeal the prisoner consents to the deduction of the initial partial filing fee and the remaining installments from the prisoner's prison account by prison officials; (c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and (d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of $35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

Id. at 484.

Conclusion

Accordingly, it is **ORDERED** that

(1) this case is summarily dismissed without prejudice for failure to state a claim;

(2) all pending motions are denied as moot; and

(3) the agency having custody of Plaintiff is directed to forward to the Clerk of the Court monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account each time the amount in the account exceeds $10 until the $350 filing fee is paid.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 7, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

DALLAS CODY HILT,

Plaintiff,

v. Case No. 24-cv-00023-RK-P

CHAD ANDERSON,

Defendant.

O **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

x **DECISION OF THE COURT**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: This case is summarily dismissed without prejudice for failure to state a claim.

Entered on: May 7, 2024.

PAIGE WYMORE-WYNN
CLERK OF COURT

/s/ K. Willis
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:24-cv-00023-RK-P
	)	
CHAD ANDERSON,	)	
	)	
Defendant.	)	

ORDER

This pro se matter was filed pursuant to 42 U.S.C. § 1983. On May 7, 2024, this Court entered an Order and Judgment summarily dismissing, without prejudice, this action for failure to state a claim upon which relief can be granted against Defendants in their official capacity. Docs. 15, 16. Plaintiff has now filed a notice of appeal. Doc. 17. Although Plaintiff did not file a request to proceed in forma pauperis on appeal, this Court assumes his intent to do so.

Under 28 U.S.C. § 1915(a)(3), an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. *See* Fed. R. App. P. 24(a). Good faith requires that Plaintiff's argument on appeal must not be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Because Plaintiff has presented no non-frivolous issues deserving of appellate review, Plaintiff is denied leave to proceed *in forma pauperis* on appeal at this time.

Accordingly, it is **ORDERED** that:

(1) Plaintiff is denied leave to proceed *in forma pauperis* on appeal;

(2) Plaintiff must pay the $605 appellate filing and docketing fees or apply for leave to proceed *in forma pauperis* with the United States Court of Appeals for the Eighth Circuit within the time set forth in Federal Rule of Appellate Procedure 24(a) if he seeks to proceed with this appeal; and

(3) the Clerk of the Court shall electronically forward this case to the United States Court of Appeals for the Eighth Circuit for further processing of Plaintiff's appeal.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2054

Dallas Cody Hilt

Plaintiff - Appellant

v.

Clay County Sheriff's Department; Phillips, Desk Sgt., Clay County Sheriff's Department; Teale, Deputy, Clay County Sheriff's Department; S. Copp, Officer, Clay County Sheriff's Department

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00025-RK)

JUDGMENT

Before GRUENDER, SHEPHERD, and KOBES, Circuit Judges.

The motion for leave to proceed in forma pauperis has been considered and is granted. The full $605 appellate and docketing fees are assessed against the appellant. Appellant will be permitted to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2). The court remands the calculation of the installments and the collection of the fees to the district court.

Appellant's motion to use the original record is granted.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

September 03, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2054

Dallas Cody Hilt

Appellant

v.

Clay County Sheriff's Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00025-RK)

ORDER

The petition for rehearing by the panel is denied. Appellant's motion for appointment of counsel is also denied.

October 10, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

DALLAS CODY HILT,

Plaintiff,

v. Case No. 24-cv-00025-RK-P

CLAY COUNTY SHERIFF DEPT, et al.,

Defendants.

O **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

x **DECISION OF THE COURT**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: This case is summarily dismissed without prejudice for failure to state a claim.

Entered on: May 7, 2024.

PAIGE WYMORE-WYNN
CLERK OF COURT

/s/ K. Willis
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:24-cv-00025-RK-P
	)	
CLAY COUNTY SHERIFF DEPT, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff, who currently is confined at Clay County Detention Center, has filed pro se this civil rights action pursuant to 42 U.S.C. § 1983, seeking relief for certain claimed violations of his federally protected rights. Plaintiff has been granted leave to proceed *in forma pauperis* without the prepayment of court fees or costs and has paid the initial partial filing fee.

Standard

As the Court has determined that Plaintiff does qualify to proceed *in forma pauperis*, the Court now considers whether the complaint nonetheless should be dismissed because it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *Martin-Trigona v. Stewart*, 691 F.2d 856, 857 (8th Cir. 1982) (citing 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)). More specifically, the Court "shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). A claim is frivolous if it lacks an arguable basis in fact or in law. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term "frivolous" in this context "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.*; *see also Wilson v. Johnston*, 68 Fed. Appx. 761 (8th Cir. 2003) (court may dismiss complaint proceeding *in forma pauperis* as "frivolous, and disregard clearly baseless, fanciful, fantastical, or delusional factual allegations").

In reviewing a pro se complaint at this early stage, the Court gives the complaint the benefit of every doubt, no matter how unlikely. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992). A "pro se complaint must be liberally construed, and 'pro se litigants are held to a lesser pleading standard than

other parties.'" *Whitson v. Stone Cnty. Jail*, 602 F.3d 920, 922 n.1 (8th Cir. 2010) (citations omitted). This standard, however, does not excuse pro se complaints from alleging "sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004); *see Frey v. City of Herculaneum*, 44 F.3d 667, 672 (8th Cir. 1995) (holding that *pro se* complaint fell "short of meeting even the liberal standard for notice pleading" where it was "entirely conclusory" and gave "no idea what acts the individual defendants were accused of that could result in liability").

Complaint

Plaintiff asserts official capacity claims against four defendants in this action: (1) Clay County Sheriff Department; (2) Sgt. Phillips; (3) Deputy Teale; and (4) Officer S. Copp. Doc. 1. Plaintiff broadly alleges claims of use of force that allegedly occurred on October 30, 2022. *Id.* at 5. Plaintiff states he received "redness on my ankles & wrist from the restraint chair straps." *Id.* at 7. For relief, Plaintiff seeks punitive damages in the amount of $40,000. *Id.*

Analysis

The Court must now decide whether Plaintiff meets the second prong of the *Martin-Trigona* test: whether the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii).

Official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 690 n.55 (1978)). As long as the government entity receives notice and an opportunity to respond, an official capacity suit is, in all respects other than name, to be treated as a suit against the entity. *Id.* at 166. Thus, Plaintiff's official capacity claims against Defendants are to be treated as claims against Clay County, Missouri.

Section 1983 liability against municipalities and other local government units, however, is limited:

> Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person," by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to

> governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels.

Monell, 436 U.S. at 690-91. A municipality cannot be held liable under § 1983 on a *respondeat superior* theory. *Id.* at 691; *see also Johnson*, 172 F.3d at 535-36. Thus, for a county to be held liable under § 1983, Plaintiff must establish that "some custom or policy of the [county] was the moving force behind the constitutional violation." *Wilson v. Spain*, 203 F.3d 713, 717 (8th Cir. 2000). In other words, Plaintiff must demonstrate that the constitutional violation occurred "from action pursuant to official [county] policy of some nature." *McGautha v. Jackson Cnty. Mo., Collections Dep't*, 36 F.3d 53, 55-56 (8th Cir. 1994) (quoting *Monell*, 436 U.S. at 691). Official policy is established by a "deliberate choice to follow a course of action . . . made . . . by an official who has the final authority to establish governmental policy." *Jane Doe v. Special Sch. Dist.*, 901 F.2d 642, 645 (8th Cir. 1990) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)) (internal citation omitted). Alternatively, Plaintiff must demonstrate a "pattern of 'persistent and widespread' unconstitutional practices which became so 'permanent and well settled' as to have the effect and force of law." *Id.* at 646 (quoting *Monell*, 436 U.S. at 691). To show an unconstitutional governmental custom, Plaintiff must prove: (1) existence of a "continuing, widespread, persistent pattern of unconstitutional misconduct" by county employees; (2) "[d]eliberate indifference to or tacit authorization of such conduct by the [county]'s policymaking officials after notice to the officials of that misconduct"; and (3) injury caused by "acts pursuant to the [county]'s custom, i.e., that the custom was the moving force behind the constitutional violation." *Id.*

Liberally construing the pleadings, it is clear Plaintiff has not satisfied the pleading standard to impose § 1983 liability on Defendants. Plaintiff has failed to plead any facts to show municipal custom, usage, or policy as the driving force behind the alleged infringement upon his constitutional rights.

Plaintiff has failed to state a claim upon which relief can be granted. Accordingly, this case is dismissed without prejudice. Plaintiff is advised that this dismissal will count against him for purposes of the three-dismissal rule set forth in 28 U.S.C. § 1915(g).

Notice Concerning $505 Appeal Fee

Plaintiff is advised that if he appeals this dismissal, in addition to the $350 filing fee, federal law now "'makes prisoners responsible for [appellate filing fees of $505] the moment the prisoner

. . . files an appeal.'" *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (citation omitted). Pursuant to *Henderson*, Plaintiff is notified as follows:

> (a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full . . . appellate filing fees regardless of the outcome of the appeal; (b) by filing a notice of appeal the prisoner consents to the deduction of the initial partial filing fee and the remaining installments from the prisoner's prison account by prison officials; (c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and (d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of $35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

Id. at 484.

Conclusion

Accordingly, it is **ORDERED** that

(1) this case is summarily dismissed without prejudice for failure to state a claim;

(2) all pending motions are denied as moot; and

(3) the agency having custody of Plaintiff is directed to forward to the Clerk of the Court monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account each time the amount in the account exceeds $10 until the $350 filing fee is paid.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 7, 2024

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2054

Dallas Cody Hilt

Appellant

v.

Clay County Sheriff's Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00025-RK)

MANDATE

In accordance with the judgment of September 3, 2024, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

October 17, 2024

Acting Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2058

Dallas Cody Hilt

Plaintiff - Appellant

v.

Kansas City Missouri Police Department; Lentz, Sgt., KCMO Police Department; Erpelding, Officer, KCMO Police Department

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00073-RK)

JUDGMENT

Before GRUENDER, SHEPHERD and KOBES, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted. The full $605 appellate filing and docketing fees are assessed against the appellant. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. § 1915(b). The court remands the assessment and collection of those fees to the district court.

It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

The motion for leave to use the original record on appeal is granted.

September 03, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2058

Dallas Cody Hilt

Appellant

v.

Kansas City Missouri Police Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00073-RK)

ORDER

The petition for rehearing by the panel is denied. Appellant's motion for appointment of counsel is also denied.

October 10, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

DALLAS CODY HILT,

Plaintiff,

Case No. 24-cv-00073-RK-P

KANSAS CITY MISSOURI
POLICE DEPARTMENT, et al.,

Defendants.

O **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

x **DECISION OF THE COURT**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: This case is dismissed, without prejudice, pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and for failure to comply with this Court's order. Any motion to reopen this case must be filed within a reasonable period of time and must comply with the Court's previous Order.

Entered on: March 11, 2024

PAIGE WYMORE-WYNN
CLERK OF COURT

/s/ K. Willis
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:24-cv-00073-RK-P
	)	
KANSAS CITY MISSOURI POLICE DEPT, et al.,	)	
	)	
	)	
Defendants.	)	

ORDER

Plaintiff, who currently is confined at Clay County Detention Center, has filed pro se this civil rights action pursuant to 42 U.S.C. § 1983, seeking relief for certain claimed violations of his federally protected rights. Plaintiff has been granted leave to proceed *in forma pauperis* without the prepayment of court fees or costs and has paid the initial partial filing fee.

Standard

As the Court has determined that Plaintiff does qualify to proceed *in forma pauperis*, the Court now considers whether the complaint nonetheless should be dismissed because it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *Martin-Trigona v. Stewart*, 691 F.2d 856, 857 (8th Cir. 1982) (citing 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)). More specifically, the Court "shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). A claim is frivolous if it lacks an arguable basis in fact or in law. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term "frivolous" in this context "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.*; *see also Wilson v. Johnston*, 68 Fed. Appx. 761 (8th Cir. 2003) (court may dismiss complaint proceeding *in forma pauperis* as "frivolous, and disregard clearly baseless, fanciful, fantastical, or delusional factual allegations").

In reviewing a pro se complaint at this early stage, the Court gives the complaint the benefit of every doubt, no matter how unlikely. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992). A "pro se

complaint must be liberally construed, and 'pro se litigants are held to a lesser pleading standard than other parties.'" *Whitson v. Stone Cnty. Jail*, 602 F.3d 920, 922 n.1 (8th Cir. 2010) (citations omitted). This standard, however, does not excuse pro se complaints from alleging "sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004); *see Frey v. City of Herculaneum*, 44 F.3d 667, 672 (8th Cir. 1995) (holding that *pro se* complaint fell "short of meeting even the liberal standard for notice pleading" where it was "entirely conclusory" and gave "no idea what acts the individual defendants were accused of that could result in liability").

Complaint

Plaintiff asserts official capacity claims against three defendants in this action: (1) Kansas City Missouri Police Department; (2) Sgt. Lentz; and (3) Officer Erpelding. Doc. 1. As best as the Court can discern, Plaintiff claims "Officer Erpelding lied under oath claiming that I kicked him in the chest multiple times." *Id.* at 4. Plaintiff further states, "Sgt. Lentz made the same claim." *Id.* Plaintiff alleges emotional distress and loss of freedom. *Id.* at 5. For relief, Plaintiff seeks post-conviction relief and monetary damages in the amount of $40,000. *Id.* at 5.

Analysis

The Court must now decide whether Plaintiff meets the second prong of the *Martin-Trigona* test: whether the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii).

Under § 1983, a plaintiff may recover damages from "[e]very person who, under the color of any statute . . . or regulation" causes "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." The Supreme Court has held that municipalities and local governments are "among those persons to whom § 1983 applies." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). However, such a suit brought against a municipal employee in an official capacity, is "tantamount to an action [brought] directly against the public entity of which the official is an agent." *Clay v. Conlee*, 815 F.2d 1164, 1170 (8th Cir. 1987); *see Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity"); *Spencer v. Knapheide Truck Equip. Co.*, 183 F.3d 902, 905 (8th Cir. 1999) ("because [Plaintiff's] section 1983 suit is against the members of the Board [of Police Commissioners of Kansas City, Missouri] in their official capacities, it must be treated as a suit against the municipality").

For a municipality to be liable under § 1983 for unconstitutional acts of its employees or agents, Plaintiff must establish that "some custom or policy of the municipality was the moving force behind the constitutional violation." *Wilson*, 209 F.3d at 717. In other words, a municipality can be held liable in this instance only where "deliberate action attributable to the municipality directly caused a deprivation of federal rights." *Bd. of the Cnty. Comm'rs v. Brown*, 520 U.S. 397, 403, 415 (1997). Plaintiff must demonstrate that the constitutional violation occurred "by an action pursuant to official municipal policy or misconduct so pervasive among non-policymaking employees of the municipalities as to constitute a custom or usage with the force of law." *Ware v. Jackson County*, 150 F.3d 873, 880 (8th Cir. 1998) (citing *Monell*, 436 U.S. at 691) (internal citations omitted). Official municipal policy is established by a "deliberate choice to follow a course of action . . . made . . . by an official who has the final authority to establish governmental policy." *Jane Doe v. Special Sch. Dist.*, 901 F.2d 642, 645 (8th Cir. 1990) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)) (internal citation omitted). Similarly, municipal custom or usage is only established by a "pattern of persistent and widespread unconstitutional practices" that is "permanent and well settled as to have the effect and force of law." *Id.* at 646 (citing *Monell*, 436 U.S. at 691) (internal citation omitted).

Liberally construing the pleadings, it is clear Plaintiff has not satisfied the pleading standard to impose § 1983 liability on Defendants. Plaintiff has failed to plead any facts to show municipal custom, usage, or policy as the driving force behind the alleged infringement upon his constitutional rights. Plaintiff's official capacity claims against Defendants have failed to state a claim upon which relief can be granted.

Even if Plaintiff had asserted individual capacity claims, Plaintiff does not allege that he sustained any injury or suffered any harm as a result of the alleged incident. The Prison Litigation Reform Act, codified as 42 U.S.C. § 1997e(e), section 803(d) provides as follows: "No Federal civil action may be brought by a prisoner confined in jail, prison, or other correctional facility, for mental or emotional injury suffered while in custody without a prior showing of physical injury." Consequently, even if Defendants' conduct can be construed as violating Plaintiff's constitutional rights, compensatory damages cannot be awarded for the violation alone. There must be an actual injury resulting from the violation to warrant damages. *See Memphis Community School Dist. v. Stachura,* 477 U.S. 299, 307 (1986) ("[w]here no injury was present, no compensatory damages could be awarded.") (internal quotations omitted).

Accordingly, this case is dismissed without prejudice. Plaintiff is advised that this dismissal will count against him for purposes of the three-dismissal rule set forth in 28 U.S.C. § 1915(g).

Notice Concerning $505 Appeal Fee

Plaintiff is advised that if he appeals this dismissal, in addition to the $350 filing fee, federal law now "'makes prisoners responsible for [appellate filing fees of $505] the moment the prisoner . . . files an appeal.'" *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (citation omitted). Pursuant to *Henderson*, Plaintiff is notified as follows:

> (a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full . . . appellate filing fees regardless of the outcome of the appeal; (b) by filing a notice of appeal the prisoner consents to the deduction of the initial partial filing fee and the remaining installments from the prisoner's prison account by prison officials; (c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and (d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of $35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

Id. at 484.

Conclusion

Accordingly, it is **ORDERED** that

(1) this case is summarily dismissed without prejudice for failure to state a claim;

(2) all pending motions are denied as moot; and

(3) the agency having custody of Plaintiff is directed to forward to the Clerk of the Court monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account each time the amount in the account exceeds $10 until the $350 filing fee is paid.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 7, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 4:24-cv-00073-RK-P
	)	
KANSAS CITY MISSOURI POLICE DEPARTMENT, et al.,	)	
	)	
Defendants.	)	

ORDER

This pro se matter was filed pursuant to 42 U.S.C. § 1983. On January 30, 2024, the Court directed Plaintiff to pay the initial partial filing fee of $2.93 on or before February 14, 2024. Doc. 4. Plaintiff was cautioned that failure to timely comply will result in the dismissal of this case without further notice. *Id.* On February 22, 2024, the Court directed Plaintiff show cause, on or before March 7, 2024, why this case should not be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and for failure to comply with this Court's Orders. Doc. 5. To date, Plaintiff has failed to respond or comply with the Court's order.

Pursuant to Fed. R. Civ. P. 41(b), if the Plaintiff fails to prosecute or to comply with a court order, the Court may dismiss the action or claim. Because Plaintiff has not complied with this Court's order, this case is dismissed.

Accordingly, it is **ORDERED** that this case is dismissed, without prejudice, pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and for failure to comply with this Court's order. Any motion to reopen this case must be filed within a reasonable period of time and must comply with the Court's previous Order.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: March 11, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 4:24-cv-00073-RK-P
	)	
KANSAS CITY MISSOURI POLICE DEPARTMENT, et al.,	)	
	)	
	)	
Defendants.	)	

ORDER

This pro se matter was filed pursuant to 42 U.S.C. § 1983. On May 7, 2024, this Court entered an Order and Judgment summarily dismissing, without prejudice, this action for failure to state a claim upon which relief can be granted against Defendants in their official capacity. Docs. 10, 11. Plaintiff has now filed a notice of appeal. Doc. 12. Although Plaintiff did not file a request to proceed in forma pauperis on appeal, this Court assumes his intent to do so.

Under 28 U.S.C. § 1915(a)(3), an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. *See* Fed. R. App. P. 24(a). Good faith requires that Plaintiff's argument on appeal must not be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Because Plaintiff has presented no non-frivolous issues deserving of appellate review, Plaintiff is denied leave to proceed *in forma pauperis* on appeal at this time.

Accordingly, it is **ORDERED** that:

(1) Plaintiff is denied leave to proceed *in forma pauperis* on appeal;

(2) Plaintiff must pay the $605 appellate filing and docketing fees or apply for leave to proceed *in forma pauperis* with the United States Court of Appeals for the Eighth Circuit within the time set forth in Federal Rule of Appellate Procedure 24(a) if he seeks to proceed with this appeal; and

(3) the Clerk of the Court shall electronically forward this case to the United States Court of Appeals for the Eighth Circuit for further processing of Plaintiff's appeal.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 21, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

DALLAS CODY HILT,

Plaintiff,

v. Case No. 24-cv-00073-RK-P

KANSAS CITY POLICE DEPT, et al.,

Defendants.

O **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

x **DECISION OF THE COURT**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: This case is summarily dismissed without prejudice for failure to state a claim.

Entered on: May 7, 2024.

PAIGE WYMORE-WYNN
CLERK OF COURT

/s/ K. Willis
(By) Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2058

Dallas Cody Hilt

Appellant

v.

Kansas City Missouri Police Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00073-RK)

MANDATE

In accordance with the judgment of September 3, 2024, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

October 17, 2024

Acting Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2059

Dallas Cody Hilt

Plaintiff - Appellant

v.

Vernon County Sheriff's Department; Highly, Cpl., Vernon County Sheriff's Department; Rima, Officer, Vernon County Sheriff's Department; Blakely, Lt., Vernon County Sheriff's Department; Victoria Moore, Administrator, Vernon County Sheriff's Department

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:24-cv-05004-RK)

JUDGMENT

Before GRUENDER, SHEPHERD and KOBES, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted. The full $605 appellate filing and docketing fees are assessed against the appellant. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. § 1915(b). The court remands the assessment and collection of those fees to the district court.

It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

The motion for leave to use the original record on appeal is granted.

September 03, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2059

Dallas Cody Hilt

Appellant

v.

Vernon County Sheriff's Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:24-cv-05004-RK)

ORDER

The petition for rehearing by the panel is denied. Appellant's motion for appointment of counsel is also denied.

October 10, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHWESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 3:24-cv-05004-RK-P
	)	
VERNON COUNTY SHERIFF'S DEPT, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff, who currently is confined at Clay County Detention Center, has filed pro se this civil rights action pursuant to 42 U.S.C. § 1983, seeking relief for certain claimed violations of his federally protected rights. Plaintiff has been granted leave to proceed *in forma pauperis* without the prepayment of court fees or costs and has paid the initial partial filing fee.

Standard

As the Court has determined that Plaintiff does qualify to proceed *in forma pauperis*, the Court now considers whether the complaint nonetheless should be dismissed because it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *Martin-Trigona v. Stewart*, 691 F.2d 856, 857 (8th Cir. 1982) (citing 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)). More specifically, the Court "shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). A claim is frivolous if it lacks an arguable basis in fact or in law. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term "frivolous" in this context "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.*; *see also Wilson v. Johnston*, 68 Fed. Appx. 761 (8th Cir. 2003) (court may dismiss complaint proceeding *in forma pauperis* as "frivolous, and disregard clearly baseless, fanciful, fantastical, or delusional factual allegations").

In reviewing a pro se complaint at this early stage, the Court gives the complaint the benefit of every doubt, no matter how unlikely. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992). A "pro se complaint must be liberally construed, and 'pro se litigants are held to a lesser pleading standard than

other parties.'" *Whitson v. Stone Cnty. Jail*, 602 F.3d 920, 922 n.1 (8th Cir. 2010) (citations omitted). This standard, however, does not excuse pro se complaints from alleging "sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004); *see Frey v. City of Herculaneum*, 44 F.3d 667, 672 (8th Cir. 1995) (holding that *pro se* complaint fell "short of meeting even the liberal standard for notice pleading" where it was "entirely conclusory" and gave "no idea what acts the individual defendants were accused of that could result in liability").

Complaint

Plaintiff asserts official capacity claims against five defendants in this action: (1) Vernon County Sheriff's Department; (2) Cpl. Highly; (3) Officer Rima; (4) Lt. Blakely; and (5) Victoria Moore. Doc. 1. Plaintiff broadly asserts Defendants "failed to properly fax over court motions to the circuit clerk's office[.]" *Id.* at 7. Plaintiff states, "I believe they read my motions and just threw them away." *Id.* Plaintiff states no injuries were sustained. *Id.* For relief, Plaintiff seeks "general deterrence." *Id.*

Analysis

The Court must now decide whether Plaintiff meets the second prong of the *Martin-Trigona* test: whether the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii).

Official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 690 n.55 (1978)). As long as the government entity receives notice and an opportunity to respond, an official capacity suit is, in all respects other than name, to be treated as a suit against the entity. *Id.* at 166. Thus, Plaintiff's official capacity claims against Defendants are to be treated as claims against Vernon County, Missouri.

Section 1983 liability against municipalities and other local government units, however, is limited:

> Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the § 1983 action against a government body is an allegation that official policy is responsible for a deprivation of rights protected by

> the Constitution, local governments, like every other § 1983 "person," by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels.

Monell, 436 U.S. at 690-91. A municipality cannot be held liable under § 1983 on a *respondeat superior* theory. *Id.* at 691; s*ee also Johnson*, 172 F.3d at 535-36. Thus, for a county to be held liable under § 1983, Plaintiff must establish that "some custom or policy of the [county] was the moving force behind the constitutional violation." *Wilson v. Spain*, 203 F.3d 713, 717 (8th Cir. 2000). In other words, Plaintiff must demonstrate that the constitutional violation occurred "from action pursuant to official [county] policy of some nature." *McGautha v. Jackson Cnty. Mo., Collections Dep't*, 36 F.3d 53, 55-56 (8th Cir. 1994) (quoting *Monell*, 436 U.S. at 691). Official policy is established by a "deliberate choice to follow a course of action . . . made . . . by an official who has the final authority to establish governmental policy." *Jane Doe v. Special Sch. Dist.*, 901 F.2d 642, 645 (8th Cir. 1990) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)) (internal citation omitted). Alternatively, Plaintiff must demonstrate a "pattern of 'persistent and widespread' unconstitutional practices which became so 'permanent and well settled' as to have the effect and force of law." *Id.* at 646 (quoting *Monell*, 436 U.S. at 691). To show an unconstitutional governmental custom, Plaintiff must prove: (1) existence of a "continuing, widespread, persistent pattern of unconstitutional misconduct" by county employees; (2) "[d]eliberate indifference to or tacit authorization of such conduct by the [county]'s policymaking officials after notice to the officials of that misconduct"; and (3) injury caused by "acts pursuant to the [county]'s custom, i.e., that the custom was the moving force behind the constitutional violation." *Id.*

Liberally construing the pleadings, it is clear Plaintiff has not satisfied the pleading standard to impose § 1983 liability on Defendants. Plaintiff has failed to plead any facts to show municipal custom, usage, or policy as the driving force behind the alleged infringement upon his constitutional rights. Plaintiff's official capacity claims against Defendants are dismissed.

Accordingly, this case is dismissed without prejudice. Plaintiff is advised that this dismissal will count against him for purposes of the three-dismissal rule set forth in 28 U.S.C. § 1915(g).

Notice Concerning $505 Appeal Fee

Plaintiff is advised that if he appeals this dismissal, in addition to the $350 filing fee, federal law now "'makes prisoners responsible for [appellate filing fees of $505] the moment the prisoner

. . . files an appeal.'" *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (citation omitted). Pursuant to *Henderson*, Plaintiff is notified as follows:

> (a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full . . . appellate filing fees regardless of the outcome of the appeal; (b) by filing a notice of appeal the prisoner consents to the deduction of the initial partial filing fee and the remaining installments from the prisoner's prison account by prison officials; (c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and (d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of $35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

Id. at 484.

Conclusion

Accordingly, it is **ORDERED** that

(1) this case is summarily dismissed without prejudice for failure to state a claim;

(2) all pending motions are denied as moot; and

(3) the agency having custody of Plaintiff is directed to forward to the Clerk of the Court monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account each time the amount in the account exceeds $10 until the $350 filing fee is paid.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 7, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI SOUTHERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 3:24-cv-05004-RK-P
	)	
VERNON COUNTY SHERIFF'S DEPT, et al.,	)	
	)	
Defendants.	)	

ORDER

This pro se matter was filed pursuant to 42 U.S.C. § 1983. On May 7, 2024, this Court entered an Order and Judgment summarily dismissing, without prejudice, this action for failure to state a claim upon which relief can be granted against Defendants in their official capacity. Docs. 14, 15. Plaintiff has now filed a notice of appeal. Doc. 16. Although Plaintiff did not file a request to proceed in forma pauperis on appeal, this Court assumes his intent to do so.

Under 28 U.S.C. § 1915(a)(3), an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. *See* Fed. R. App. P. 24(a). Good faith requires that Plaintiff's argument on appeal must not be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Because Plaintiff has presented no non-frivolous issues deserving of appellate review, Plaintiff is denied leave to proceed *in forma pauperis* on appeal at this time.

Accordingly, it is **ORDERED** that:

(1) Plaintiff is denied leave to proceed *in forma pauperis* on appeal;

(2) Plaintiff must pay the $605 appellate filing and docketing fees or apply for leave to proceed *in forma pauperis* with the United States Court of Appeals for the Eighth Circuit within the time set forth in Federal Rule of Appellate Procedure 24(a) if he seeks to proceed with this appeal; and

(3) the Clerk of the Court shall electronically forward this case to the United States Court of Appeals for the Eighth Circuit for further processing of Plaintiff's appeal.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2059

Dallas Cody Hilt

Appellant

v.

Vernon County Sheriff's Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Joplin
(3:24-cv-05004-RK)

MANDATE

In accordance with the judgment of September 3, 2024, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

October 17, 2024

Acting Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2060

Dallas Cody Hilt

Plaintiff - Appellant

v.

Liberty Police Department; Bledsoe, Officer, Liberty Police Department; Heidi, Cpl., Liberty Police Department; Ben Laughlin, Officer, Liberty Police Department; Anderson, Cpl., Liberty Police Department; Childs, Sgt., Liberty Police Department

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00024-RK)

JUDGMENT

Before GRUENDER, SHEPHERD and KOBES, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted. The full $605 appellate filing and docketing fees are assessed against the appellant. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. § 1915(b). The court remands the assessment and collection of those fees to the district court.

It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

The motion for leave to use the original record on appeal is granted.

September 03, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2060

Dallas Cody Hilt

Appellant

v.

Liberty Police Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00024-RK)

ORDER

The petition for rehearing by the panel is denied. Appellant's motion for appointment of counsel is also denied.

October 10, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:24-cv-00024-RK-P
	)	
LIBERTY POLICE DEPT, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff, who currently is confined at Clay County Detention Center, has filed pro se this civil rights action pursuant to 42 U.S.C. § 1983, seeking relief for certain claimed violations of his federally protected rights. Plaintiff has been granted leave to proceed *in forma pauperis* without the prepayment of court fees or costs and has paid the initial partial filing fee.

Standard

As the Court has determined that Plaintiff does qualify to proceed *in forma pauperis*, the Court now considers whether the complaint nonetheless should be dismissed because it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *Martin-Trigona v. Stewart*, 691 F.2d 856, 857 (8th Cir. 1982) (citing 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)). More specifically, the Court "shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). A claim is frivolous if it lacks an arguable basis in fact or in law. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term "frivolous" in this context "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.*; *see also Wilson v. Johnston*, 68 Fed. Appx. 761 (8th Cir. 2003) (court may dismiss complaint proceeding *in forma pauperis* as "frivolous, and disregard clearly baseless, fanciful, fantastical, or delusional factual allegations").

In reviewing a pro se complaint at this early stage, the Court gives the complaint the benefit of every doubt, no matter how unlikely. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992). A "pro se complaint must be liberally construed, and 'pro se litigants are held to a lesser pleading standard than

other parties.'" *Whitson v. Stone Cnty. Jail*, 602 F.3d 920, 922 n.1 (8th Cir. 2010) (citations omitted). This standard, however, does not excuse pro se complaints from alleging "sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004); *see Frey v. City of Herculaneum*, 44 F.3d 667, 672 (8th Cir. 1995) (holding that *pro se* complaint fell "short of meeting even the liberal standard for notice pleading" where it was "entirely conclusory" and gave "no idea what acts the individual defendants were accused of that could result in liability").

Complaint

Plaintiff asserts official capacity claims against six defendants in this action: (1) Liberty Police Department; (2) Officer Bledsoe; (3) Cpl. Heidi; (4) Officer Ben Laughlin; (5) Cpl. Anderson; and (6) Sgt. Childs. Doc. 1. As best as the Court can discern, Plaintiff describes two arrests conducted by Defendants Heidi and Bledsoe that occurred on October 29, 2022, and October 30, 2022, where he was placed in a spit mask and restraint chair. *Id.* at 5. Plaintiff alleges physical injuries by Defendants Laughlin, Childs, and Anderson. *Id.* at 5-6. For relief, Plaintiff seeks punitive damages in the amount of $40,000. *Id.* at 7.

Analysis

The Court must now decide whether Plaintiff meets the second prong of the *Martin-Trigona* test: whether the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii).

Under § 1983, a plaintiff may recover damages from "[e]very person who, under the color of any statute . . . or regulation" causes "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws." The Supreme Court has held that municipalities and local governments are "among those persons to whom § 1983 applies." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). However, such a suit brought against a municipal employee in an official capacity, is "tantamount to an action [brought] directly against the public entity of which the official is an agent." *Clay v. Conlee*, 815 F.2d 1164, 1170 (8th Cir. 1987); *see Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity"); *Spencer v. Knapheide Truck Equip. Co.*, 183 F.3d 902, 905 (8th Cir. 1999) ("because [Plaintiff's] section 1983 suit is against the members of the Board [of Police Commissioners of Kansas City, Missouri] in their official capacities, it must be treated as a suit against the municipality").

For a municipality to be liable under § 1983 for unconstitutional acts of its employees or agents, Plaintiff must establish that "some custom or policy of the municipality was the moving force behind the constitutional violation." *Wilson*, 209 F.3d at 717. In other words, a municipality can be held liable in this instance only where "deliberate action attributable to the municipality directly caused a deprivation of federal rights." *Bd. of the Cnty. Comm'rs v. Brown*, 520 U.S. 397, 403, 415 (1997). Plaintiff must demonstrate that the constitutional violation occurred "by an action pursuant to official municipal policy or misconduct so pervasive among non-policymaking employees of the municipalities as to constitute a custom or usage with the force of law." *Ware v. Jackson County*, 150 F.3d 873, 880 (8th Cir. 1998) (citing *Monell*, 436 U.S. at 691) (internal citations omitted). Official municipal policy is established by a "deliberate choice to follow a course of action . . . made . . . by an official who has the final authority to establish governmental policy." *Jane Doe v. Special Sch. Dist.*, 901 F.2d 642, 645 (8th Cir. 1990) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)) (internal citation omitted). Similarly, municipal custom or usage is only established by a "pattern of persistent and widespread unconstitutional practices" that is "permanent and well settled as to have the effect and force of law." *Id.* at 646 (citing *Monell*, 436 U.S. at 691) (internal citation omitted).

Liberally construing the pleadings, it is clear Plaintiff has not satisfied the pleading standard to impose § 1983 liability on Defendants. Plaintiff has failed to plead any facts to show municipal custom, usage, or policy as the driving force behind the alleged infringement upon his constitutional rights.

Plaintiff's official capacity claims against Defendants have failed to state a claim upon which relief can be granted. Accordingly, this case is dismissed without prejudice. Plaintiff is advised that this dismissal will count against him for purposes of the three-dismissal rule set forth in 28 U.S.C. § 1915(g).

Notice Concerning $505 Appeal Fee

Plaintiff is advised that if he appeals this dismissal, in addition to the $350 filing fee, federal law now "'makes prisoners responsible for [appellate filing fees of $505] the moment the prisoner . . . files an appeal.'" *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (citation omitted). Pursuant to *Henderson*, Plaintiff is notified as follows:

> (a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full . . . appellate filing fees regardless of the outcome of the appeal; (b) by filing a notice of appeal the

> prisoner consents to the deduction of the initial partial filing fee and the remaining installments from the prisoner's prison account by prison officials; (c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and (d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of $35 or such other amount that is reasonable, based on whatever information the court has about the prisoner's finances.

Id. at 484.

Conclusion

Accordingly, it is **ORDERED** that

(1) this case is summarily dismissed without prejudice for failure to state a claim;

(2) all pending motions are denied as moot; and

(3) the agency having custody of Plaintiff is directed to forward to the Clerk of the Court monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account each time the amount in the account exceeds $10 until the $350 filing fee is paid.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 7, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:24-cv-00024-RK-P
	)	
LIBERTY POLICE DEPT, et al.,	)	
	)	
Defendants.	)	

ORDER

This pro se matter was filed pursuant to 42 U.S.C. § 1983. On May 7, 2024, this Court entered an Order and Judgment summarily dismissing, without prejudice, this action for failure to state a claim upon which relief can be granted against Defendants in their official capacity. Docs. 15, 16. Plaintiff has now filed a notice of appeal. Doc. 17. Although Plaintiff did not file a request to proceed in forma pauperis on appeal, this Court assumes his intent to do so.

Under 28 U.S.C. § 1915(a)(3), an appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith. *See* Fed. R. App. P. 24(a). Good faith requires that Plaintiff's argument on appeal must not be frivolous. *Coppedge v. United States*, 369 U.S. 438, 445 (1962). Because Plaintiff has presented no non-frivolous issues deserving of appellate review, Plaintiff is denied leave to proceed *in forma pauperis* on appeal at this time.

Accordingly, it is **ORDERED** that:

(1) Plaintiff is denied leave to proceed *in forma pauperis* on appeal;

(2) Plaintiff must pay the $605 appellate filing and docketing fees or apply for leave to proceed *in forma pauperis* with the United States Court of Appeals for the Eighth Circuit within the time set forth in Federal Rule of Appellate Procedure 24(a) if he seeks to proceed with this appeal; and

(3) the Clerk of the Court shall electronically forward this case to the United States Court of Appeals for the Eighth Circuit for further processing of Plaintiff's appeal.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 21, 2024

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2060

Dallas Cody Hilt

Appellant

v.

Liberty Police Department, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00024-RK)

MANDATE

In accordance with the judgment of September 3, 2024, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

October 17, 2024

Acting Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2062

Dallas Cody Hilt

Plaintiff - Appellant

v.

Clay County Public Defender's Office; Andrew James Ruhlman, Public Defender, Clay County; Kevin Garrison, Public Defender, Clay County; Tiffinay W. Ludi, Public Defender, Clay County

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00036-RK)

JUDGMENT

Before GRUENDER, SHEPHERD and KOBES, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted. The full $605 appellate filing and docketing fees are assessed against the appellant. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. § 1915(b). The court remands the assessment and collection of those fees to the district court.

It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

The motion for leave to use the original record on appeal is granted.

September 03, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2062

Dallas Cody Hilt

Appellant

v.

Clay County Public Defender's Office, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00036-RK)

ORDER

The petition for rehearing by the panel is denied. Appellant's motion for appointment of counsel is also denied.

October 10, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

DALLAS CODY HILT,

Plaintiff,

v. Case No. 24-cv-00036-RK-P

CLAY COUNTY PUBLIC DEFENDER'S OFFICE, et al.,

Defendants.

O **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

x **DECISION OF THE COURT**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: This case is summarily dismissed without prejudice for failure to state a claim.

Entered on: May 7, 2024.

PAIGE WYMORE-WYNN
CLERK OF COURT

/s/ K. Willis
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 4:24-cv-00036-RK-P
	)	
CLAY COUNTY PUBLIC DEFENDER'S OFFICE, et al.,	)	
	)	
	)	
Defendants.	)	

ORDER

Plaintiff, who currently is confined at Clay County Detention Center, has filed pro se this civil rights action pursuant to 42 U.S.C. § 1983, seeking relief for certain claimed violations of his federally protected rights. Plaintiff has been granted leave to proceed *in forma pauperis* without the prepayment of court fees or costs and has paid the initial partial filing fee.

Standard

As the Court has determined that Plaintiff does qualify to proceed *in forma pauperis*, the Court now considers whether the complaint nonetheless should be dismissed because it is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *Martin-Trigona v. Stewart*, 691 F.2d 856, 857 (8th Cir. 1982) (citing 28 U.S.C. § 1915(e)(2)(B)(i)-(iii)). More specifically, the Court "shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b). A claim is frivolous if it lacks an arguable basis in fact or in law. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term "frivolous" in this context "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." *Id.*; *see also Wilson v. Johnston*, 68 Fed. Appx. 761 (8th Cir. 2003) (court may dismiss complaint proceeding *in forma pauperis* as "frivolous, and disregard clearly baseless, fanciful, fantastical, or delusional factual allegations").

In reviewing a pro se complaint at this early stage, the Court gives the complaint the benefit of every doubt, no matter how unlikely. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992). A "pro se

complaint must be liberally construed, and 'pro se litigants are held to a lesser pleading standard than other parties.'" *Whitson v. Stone Cnty. Jail*, 602 F.3d 920, 922 n.1 (8th Cir. 2010) (citations omitted). This standard, however, does not excuse pro se complaints from alleging "sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004); *see Frey v. City of Herculaneum*, 44 F.3d 667, 672 (8th Cir. 1995) (holding that *pro se* complaint fell "short of meeting even the liberal standard for notice pleading" where it was "entirely conclusory" and gave "no idea what acts the individual defendants were accused of that could result in liability").

Complaint

Plaintiff asserts official capacity claims against four defendants in this action: (1) Clay County Public Defender's Office; (2) Andrew Jame Ruhlman; (3) Kevin Garrison; and (4) Tiffinay W. Ludi. Doc. 1. Plaintiff broadly asserts claims of legal malpractice concerning the handling of his criminal actions in Clay County, Missouri by the three named public defenders. *Id.* at 4. Plaintiff states he sustained "enjoyment of life" damages and emotional distress. *Id.* at 5. For relief, Plaintiff seeks "general deterrence" and punitive damages of $40,000. *Id.*

Analysis

The Court must now decide whether Plaintiff meets the second prong of the *Martin-Trigona* test: whether the complaint is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant who is immune from relief. *See* 28 U.S.C. §§ 1915(e)(2)(B)(i)-(iii).

Official capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658, 690 n.55 (1978)). As long as the government entity receives notice and an opportunity to respond, an official capacity suit is, in all respects other than name, to be treated as a suit against the entity. *Id.* at 166. Thus, Plaintiff's official capacity claims against Defendants are to be treated as claims against Clay County, Missouri.

Section 1983 liability against municipalities and other local government units, however, is limited:

> Local governing bodies, therefore, can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, although the touchstone of the § 1983 action against a government body is an

> allegation that official policy is responsible for a deprivation of rights protected by the Constitution, local governments, like every other § 1983 "person," by the very terms of the statute, may be sued for constitutional deprivations visited pursuant to governmental "custom" even though such a custom has not received formal approval through the body's official decisionmaking channels.

Monell, 436 U.S. at 690-91. A municipality cannot be held liable under § 1983 on a *respondeat superior* theory. *Id.* at 691; *see also Johnson*, 172 F.3d at 535-36. Thus, for a county to be held liable under § 1983, Plaintiff must establish that "some custom or policy of the [county] was the moving force behind the constitutional violation." *Wilson v. Spain*, 203 F.3d 713, 717 (8th Cir. 2000). In other words, Plaintiff must demonstrate that the constitutional violation occurred "from action pursuant to official [county] policy of some nature." *McGautha v. Jackson Cnty. Mo., Collections Dep't*, 36 F.3d 53, 55-56 (8th Cir. 1994) (quoting *Monell*, 436 U.S. at 691). Official policy is established by a "deliberate choice to follow a course of action . . . made . . . by an official who has the final authority to establish governmental policy." *Jane Doe v. Special Sch. Dist.*, 901 F.2d 642, 645 (8th Cir. 1990) (citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)) (internal citation omitted). Alternatively, Plaintiff must demonstrate a "pattern of 'persistent and widespread' unconstitutional practices which became so 'permanent and well settled' as to have the effect and force of law." *Id.* at 646 (quoting *Monell*, 436 U.S. at 691). To show an unconstitutional governmental custom, Plaintiff must prove: (1) existence of a "continuing, widespread, persistent pattern of unconstitutional misconduct" by county employees; (2) "[d]eliberate indifference to or tacit authorization of such conduct by the [county]'s policymaking officials after notice to the officials of that misconduct"; and (3) injury caused by "acts pursuant to the [county]'s custom, i.e., that the custom was the moving force behind the constitutional violation." *Id.*

Liberally construing the pleadings, it is clear Plaintiff has not satisfied the pleading standard to impose § 1983 liability on Defendants. Plaintiff has failed to plead any facts to show municipal custom, usage, or policy as the driving force behind the alleged infringement upon his constitutional rights. Plaintiff's official capacity claims against Defendants are dismissed.

Even if Plaintiff had asserted individual capacity claims, the Court notes that a public defender does not act under color of state law in the normal course of conducting the defense for purposes of a civil rights action under § 1983. *Polk Cnty. v. Dodson*, 454 U.S. 312, 320-21 (1981). *See also Bilal v. Kaplan*, 904 F.2d 14, 15 (8th Cir. 1990) ("The conduct of counsel, either retained

or appointed, in representing clients, does not constitute action under color of state law for purposes of a section 1983 violation.").

Public defenders nevertheless may act under color of state law if they conspire with a state official (such as a prosecuting attorney) to deprive the plaintiff of federally protected rights. *Tower v. Glover*, 467 U.S. 914, 923 (1984). For a plaintiff to succeed in bringing such a claim, however, the allegations must at least include that defendants had directed themselves towards an unconstitutional action by virtue of a mutual understanding, and provide some facts suggesting a meeting of the minds. *Deck v. Leftridge*, 771 F.2d 1168, 1169-70 (8th Cir. 1985) (citation omitted). *See also Rogers v. Bruntrager*, 841 F.2d 853, 856 (8th Cir. 1988) (conspiracy claim requires allegations of specific facts showing a meeting of the minds among the alleged conspirators); *Trobaugh v. Sondag*, 2 Fed. Appx. 692 (8th Cir. 2001) (evidence that a defendant may have been acting under a conflict of interest when defending a plaintiff on criminal charges did not constitute conspiracy); *Manis v. Sterling*, 862 F.2d 679, 681 (8th Cir. 1988) (affirming dismissal of a prisoner's conclusory and factually unsupported allegation that a public defender and a judge conspired to deprive him of his constitutional rights).

Plaintiff has not met this burden in this case. Plaintiff has failed to state a claim upon which relief can be granted. Accordingly, this case is dismissed without prejudice. Plaintiff is advised that this dismissal will count against him for purposes of the three-dismissal rule set forth in 28 U.S.C. § 1915(g).

Notice Concerning $505 Appeal Fee

Plaintiff is advised that if he appeals this dismissal, in addition to the $350 filing fee, federal law now "'makes prisoners responsible for [appellate filing fees of $505] the moment the prisoner . . . files an appeal.'" *Henderson v. Norris*, 129 F.3d 481, 483 (8th Cir. 1997) (citation omitted). Pursuant to *Henderson*, Plaintiff is notified as follows:

> (a) the filing of a notice of appeal by the prisoner makes the prisoner liable for payment of the full . . . appellate filing fees regardless of the outcome of the appeal; (b) by filing a notice of appeal the prisoner consents to the deduction of the initial partial filing fee and the remaining installments from the prisoner's prison account by prison officials; (c) the prisoner must submit to the clerk of the district court a certified copy of the prisoner's prison account for the last six months within 30 days of filing the notice of appeal; and (d) failure to file the prison account information will result in the assessment of an initial appellate partial fee of $35 or such other

amount that is reasonable, based on whatever information the court has about the prisoner's finances.

Id. at 484.

Conclusion

Accordingly, it is **ORDERED** that

(1) this case is summarily dismissed without prejudice for failure to state a claim;

(2) all pending motions are denied as moot; and

(3) the agency having custody of Plaintiff is directed to forward to the Clerk of the Court monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account each time the amount in the account exceeds $10 until the $350 filing fee is paid.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: May 7, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JUDGMENT IN A CIVIL CASE

DALLAS CODY HILT,

Plaintiff,

Case No. 24-cv-00036-RK-P

CLAY COUNTY PUBLIC DEFENDER'S OFFICE, et al.,

Defendants.

O **JURY VERDICT**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

x **DECISION OF THE COURT**. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: This case is dismissed, without prejudice, pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and for failure to comply with this Court's order. Any motion to reopen this case must be filed within a reasonable period of time and must comply with the Court's previous Order.

Entered on: March 11, 2024

PAIGE WYMORE-WYNN
CLERK OF COURT

/s/ K. Willis
(By) Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

DALLAS CODY HILT, Plaintiff, vs. CLAY COUNTY PUBLIC DEFENDER'S OFFICE, et al., Defendants.	)	Case No.: 4:24-cv-00036-RK-P

ORDER

This pro se matter was filed pursuant to 42 U.S.C. § 1983. On January 30, 2024, the Court directed Plaintiff to pay the initial partial filing fee of $2.93 on or before February 14, 2024. Doc. 4. Plaintiff was cautioned that failure to timely comply will result in the dismissal of this case without further notice. *Id.* On February 22, 2024, the Court directed Plaintiff show cause, on or before March 7, 2024, why this case should not be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and for failure to comply with this Court's Orders. Doc. 5. To date, Plaintiff has failed to respond or comply with the Court's order.

Pursuant to Fed. R. Civ. P. 41(b), if the Plaintiff fails to prosecute or to comply with a court order, the Court may dismiss the action or claim. Because Plaintiff has not complied with this Court's order, this case is dismissed.

Accordingly, it is **ORDERED** that this case is dismissed, without prejudice, pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and for failure to comply with this Court's order. Any motion to reopen this case must be filed within a reasonable period of time and must comply with the Court's previous Order.

IT IS SO ORDERED.

/s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

Dated: March 11, 2024

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 24-2062

Dallas Cody Hilt

Appellant

v.

Clay County Public Defender's Office, et al.

Appellees

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:24-cv-00036-RK)

MANDATE

In accordance with the judgment of September 3, 2024, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

October 23, 2024

Acting Clerk, U.S. Court of Appeals, Eighth Circuit