UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Kylik Hyshaumadeen Hicks	)	
Plaintiff	)	
v.	)	Civil Action No. 24-cv-00117
Officer Cooper, et al.	)	
Defendant	)	

WAIVER OF THE SERVICE OF SUMMONS

To: Kylik Hyshaumadeen Hicks
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

I understand that I, or the entity I represent, will keep all defenses or objections to the lawsuit, the court's jurisdiction, and the venue of the action, but that I waive any objections to the absence of a summons or of service.

I also understand that I, or the entity I represent, must file and serve an answer or a motion under Rule 12 within 60 days from August 22, 2024, the date when this request was sent (or 90 days if it was sent outside the United States). If I fail to do so, a default judgment will be entered against me or the entity I represent.

Date: _____

_____
Signature of the attorney or unrepresented party

Officer Cuello
Printed name of party waiving service of summons

_____
Printed name

_____
Address

_____
E-mail address

_____
Telephone number

Duty to Avoid Unnecessary Expenses of Serving a Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain defendants to cooperate in saving unnecessary expenses of serving a summons and complaint. A defendant who is located in the United States and who fails to return a signed waiver of service requested by a plaintiff located in the United States will be required to pay the expenses of service, unless the defendant shows good cause for the failure.

"Good cause" does *not* include a belief that the lawsuit is groundless, or that it has been brought in an improper venue, or that the court has no jurisdiction over this matter or over the defendant or the defendant's property.

If the waiver is signed and returned, you can still make these and all other defenses and objections, but you cannot object to the absence of a summons or of service.

If you waive service, then you must, within the time specified on the waiver form, serve an answer or a motion under Rule 12 on the plaintiff and file a copy with the court. By signing and returning the waiver form, you are allowed more time to respond than if a summons had been served.

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Kylik Hyshaumadeen Hicks	)	
Plaintiff	)	
v.	)	Civil Action No. 24-cv-00117
Officer Cooper, et al.	)	
Defendant	)	

NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Officer Cuello

(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

What happens next?

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 8/22/2024

Signature of the attorney or unrepresented party

Kylik Hyshaumadeen Hicks

Printed name

Address

E-mail address

Telephone number

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Kylik Hyshaumadeen Hicks	)	
Plaintiff	)	
v.	)	Civil Action No. 24-cv-00117
Officer Cooper, et al.	)	
Defendant	)	

WAIVER OF THE SERVICE OF SUMMONS

To: Kylik Hyshaumadeen Hicks
(Name of the plaintiff's attorney or unrepresented plaintiff)

I have received your request to waive service of a summons in this action along with a copy of the complaint, two copies of this waiver form, and a prepaid means of returning one signed copy of the form to you.

I, or the entity I represent, agree to save the expense of serving a summons and complaint in this case.

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Date: _____

_____
Signature of the attorney or unrepresented party

Officer Cuello
Printed name of party waiving service of summons

_____
Printed name

_____
Address

_____
E-mail address

_____
Telephone number

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UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Kylik Hyshaumadeen Hicks	)	
Plaintiff	)	
v.	)	Civil Action No. 24-cv-00117
Officer Cooper, et al.	)	
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To: Officer Cuello

(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)

Why are you getting this?

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If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 8/22/2024

Signature of the attorney or unrepresented party

Kylik Hyshaumadeen Hicks

Printed name

Address

E-mail address

Telephone number

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

KYLIK HYSHAUMADEEN HICKS,

Plaintiff,

Case No. 24-cv-117-pp

v.

WEST ALLIS POLICE DEPARTMENT,
OFFICER COOPER and OFFICER CUELLO,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO PROCEED WITHOUT PREPAYING FILING FEE (DKT. NO. 2) AND SCREENING COMPLAINT

On January 29, 2024, plaintiff Kylik Hyshaumadeen Hicks—who is representing himself—filed a complaint, alleging that the defendants violated his civil rights. Dkt. No. 1. He also filed a motion to proceed without prepaying the filing fee. Dkt. No. 2.

To allow a plaintiff to proceed without prepaying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must screen the complaint to determine whether the lawsuit is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

I. Plaintiff's Ability to Pay the Filing Fee

The plaintiff's request to proceed without prepaying the filing fee says that he is unemployed, single and does not have any dependents to support. Dkt. No. 2 at 1. Under "Source of income," the plaintiff says that in the last

twelve months he has received $291 from "Quest." Id. at 2. The plaintiff wrote "N/A" next to each prompt in the "Expenses" section of his form, leaving the court to wonder whether he pays monthly rent, mortgage, car or credit card payments, and whether he pays for groceries, clothing, medical costs, utilities, cell phone or internet bills, *etc.* Id. at 2-3. As for "Property," the plaintiff says that he owns a "2002 Lexus ES 300" with an approximate current value of $3,500, does not own his home and has $300 in "cash or checking, savings, or other similar accounts." Id. at 3.

While it is not clear how the plaintiff is living without any monthly expenses[1]—perhaps he has family or friends who provide him with the basics of daily living (food, utilities, transportation costs, *etc.*)—based on the information in the request, the court concludes that the plaintiff does not have the ability to pay the filing fee. This does not mean that the plaintiff does not owe the filing fee; the Seventh Circuit has held that "every . . . person who proceeds [without prepaying the filing fee]" is "liable for the full fees," because "all [28 U.S.C.] §1915(a) does for any litigant is excuse the pre-payment of fees." Robbins v. Switzer, 104 F.3d 895, 898 (7th Cir. 1997); see also Rosas v. Roman Catholic Archdiocese of Chi., 748 F. App'x 64, 65 (7th Cir. 2019) ("Under 28 U.S.C. § 1915(a), a district court may allow a litigant to proceed 'without prepayment of fees,' but not without ever paying fees.").

[1] The complaint lists the plaintiff's address as a residence on North 2nd Lane in Milwaukee.

II. Screening the Complaint

A. Federal Screening Standard

The court next must decide whether the plaintiff has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). In determining whether the complaint states a claim, the court applies the same standard that it applies when considering whether to dismiss a case under Federal Rule of Civil Procedure 12(b)(6). See Cesal v. Moats, 851 F.3d 714, 720 (7th Cir. 2017) (citing Booker-El v. Superintendent, Ind. State Prison, 668 F.3d 896, 899 (7th Cir. 2012)). To state a claim, a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The complaint must contain enough facts, accepted as true, to "state a claim for relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows a court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. (citing Twombly, 550 U.S. at 556).

To state a claim for relief under 42 U.S.C. §1983, a plaintiff must allege that someone deprived him or her of a right secured by the Constitution or the laws of the United States, and that whoever deprived him or her of this right was acting under the color of state law. D.S. v. E. Porter Cnty. Sch. Corp., 799 F.3d 793, 798 (7th Cir. 2015) (citing Buchanan–Moore v. County of Milwaukee,

570 F.3d 824, 827 (7th Cir. 2009)). The court liberally construes complaints filed by plaintiffs who are representing themselves and holds such complaints to a less stringent standard than pleadings drafted by lawyers. Cesal, 851 F.3d at 720 (citing Perez v. Fenoglio, 792 F.3d 768, 776 (7th Cir. 2015)).

B. The Plaintiff's Allegations

The plaintiff names as defendants the West Allis Police Department, Officer Cooper and Officer Cuello. Dkt. No. 1 at 1. Under "STATEMENT OF CLAIM," the plaintiff states the following:

> Officer Cooper Violated my personal jurisdiction and twisted my arm and almost broke my wrist with a handcuff he also illegally detained me for over 45 mins with my pants down on a public road. He violated my right to travel and illegally searched and seizure my firearm which was in a holster inside of my pants which I have a license to carry. The law says anything beyond a Terry Search which is a simple pat down is a violation of the 4th Amendment. I am a private citizen and did not given this officer nor his backup jurisdiction over me. Officer Cuello was using discrimination misconduct against me calling me a drug dealer going in my pockets saying balled up paper is drugs while searching my property and didn't find any drugs on me. Entering my car without warrants from judges. I called their supervisor who took up for the cops wrong doing then Officer Cuello got mad and came to my house and had N and S towing deprive me of my car they took my car to a tow lot that looks like a scrap yard that hidden on 111th Layton Ave where every car on lot is missing parts and now my car is missing the front bumper and they refuse to give me my property back this is a clear sign of harassment and misconduct of law.
>
> Thompson v. Smith
>
> US Supreme Court Says I have the right to travel.

Dkt. No. 1 at 2-3.

Under "RELIEF WANTED," the plaintiff indicates that he either wants his car returned in "working condition" or "$3,500 for [his] car." Dkt. No. 1 at 4. He

also says that he wants $75,000 for the alleged "unlawful search and seizure," $75,000 for "harassment," $75,000 for "discrimination" and "damages and court fee" in the amount of "whatever judges deci[de]s." Id.

C. Analysis

Under "JURISDICTION," the plaintiff checked the box indicating that he is suing for a violation of federal law under 28 U.S.C. §1331. Dkt. No. 1 at 4. Although the complaint does not reference any specific federal laws, the plaintiff does cite the Fourth Amendment of the United States Constitution. Id. at 2 ("The law says anything beyond a Terry Search which is a simple pat down is a violation of the 4th Amendment."). A plaintiff can bring claims of constitutional violations against state government employees through 42 U.S.C. §1983, a federal civil rights statute. A plaintiff may sue a state or local official, like a police officer, for violating his Fourth Amendment rights under §1983.

The plaintiff has included enough factual allegations to state plausible Fourth Amendment claims against Officer Cooper and Officer Cuello. The plaintiff alleges that on an unspecified date, Cooper detained him and searched his person and vehicle during a traffic stop. He alleges that Cooper "illegally detained him for over 45 min[ute]s with his pants down on a public road," "twisted [his] arm and almost broke his wrist with a handcuff" and subjected him to an "illegal[ ] search[ ] and seizure" in "violation of the 4th Amendment." Dkt. No. 1 at 2. He also alleges that Cooper seized the plaintiff's lawfully owned firearm from "a holster inside [his] pants." Id. Liberally construed, these

allegations state plausible Fourth Amendment claims against Cooper for conducting an unlawful stop, search and seizure of the plaintiff's person and property.

As to Officer Cuello, the plaintiff alleges that s/he "us[ed] discrimination misconduct against [him] calling [him] a drug dealer going in [his] pockets saying balled up paper is drugs while searching [his] property [and] . . . . [e]ntering [his] car without [a] warrant[] . . . ." Id. at 3. Liberally construed, these allegations state a plausible Fourth Amendment claim against Cuello for conducting an unlawful search and seizure of the plaintiff's person and property.[2]

The court will allow the plaintiff to proceed with his Fourth Amendment claims against Officers Cooper and Cuello.

Unlike an individual police officer, however, a police *department* is not a suable entity. Defendants in a federal lawsuit must have the legal capacity to be sued, and the "law of the state where the court is located" determines that capacity for entities that are not individuals or corporations. Fed. R. Civ. P. 17(b)(3); see also DeGenova v. Sheriff of DuPage Cnty., 209 F.3d 973, 976 n.2 (7th Cir. 2000) ("The federal courts look to state law to determine if a defendant is amenable to suit."). Under Wisconsin law, a police department does not have the capacity to be sued. See Whiting v. Marathon Cnty. Sheriff's Dep't, 382 F.3d 700, 704 (7th Cir. 2004) (stating a sheriff's department "is not a legal

[2] It is unclear whether the plaintiff is alleging that Officer Cuello's and Officer Cooper's misconduct occurred during the same interaction.

entity separable from the county government which it serves and is therefore, not subject to suit"). Because the West Allis Police Department is not a suable entity under Wisconsin law, the plaintiff may not proceed against it, regardless of his claims. The court will dismiss the West Allis Police Department from the lawsuit.

The plaintiff cites in his complaint a "right to travel." Dkt. No. 1 at 2-3. He alleges that Officer Cooper "violated [his] right to travel" when he unlawfully stopped and detained him. Id. at 2. And at the end of his complaint, he writes that the "US Supreme Court [s]ays [he] ha[s] the right to travel" and appears to cite to a case called "Thompson v. Smith" for that proposition. Id. at 3. While the court could not find any United States Supreme Court decision called "Thompson v. Smith" that stands for the right to travel,[3] "[i]t is true that the Supreme Court has recognized that under various constitutional provisions . . . ordinary citizens have a protected right to interstate travel." Williams v. Wisconsin, 336 F.3d 576, 581 (7th Cir. 2003) (citing Saenz v. Roe, 526 U.S. 489, 498-504 (1999)).

> The right to travel "embraces at least three different components:" (1) the right of a citizen of one state to enter and leave another state; (2) the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second state; and (3) for those travelers who elect to become permanent residents, the right to be treated like other citizens of that state.

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[3] It seems likely that the plaintiff is citing to Thompson v. Smith, 154 S.E. 579 (Va. 1930), a 1930 decision from the Virginia Supreme Court (which, at the time, was called the "Supreme Court of Appeals"). In that case, the Virginia Supreme Court held that Virginia citizens have a "common right" to travel and transport property on public highways "in the ordinary course of life and business." Thompson, 154 S.E. at 583.

COMPLAINT

(for non-prisoner filers without lawyers)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

(Full name of plaintiff(s))

Kylik Hicks

v.

Case Number: 24-C-0117

(to be supplied by Clerk of Court)

(Full name of defendant(s))

West Allis Police Department

Officer Cooper

Officer Cuello

A. PARTIES

1. Plaintiff is a ~~citizen~~ Private citizen of Wisconsin and resides at

(State)

11024 W Oklahoma Ave Unit 412

(Address)

(If more than one plaintiff is filing, use another piece of paper.)

2. Defendant Officer Cooper

(Name)

is (if a person or private corporation) a citizen of Wisconsin
(State, if known)

and (if a person) resides at _____
(Address, if known)

and (if the defendant harmed you while doing the defendant's job)

worked for West Allis Police Department
(Employer's name and address, if known)

(If you need to list more defendants, use another piece of paper.)

B. STATEMENT OF CLAIM

On the space provided on the following pages, tell:

1. Who violated your rights;
2. What each defendant did;
3. When they did it;
4. Where it happened; and
5. Why they did it, if you know.

Officer Cooper Violated my personal jurisdiction and twisted my arm and almost broke my wrist with a hand cuff he also illegly detained me for over 45mins with my pants down on a public road. He violated my right to travel and illegally searched and seizure my firearm which was in a holster inside of my pants which I have a license to carry. The law says anything beyond a Terry Search wh̸ich is a simple pat down is a violation of the 4th Amendment. I am

a private citizen and did not given this officer nor his backup jurisdiction over me. Officer Cuello was using discrimination & misconduct against me calling me a drug dealer going in my pockets saying balled up paper is drugs while searching my property and didn't find any drugs on me. Entering my car without warrants from judges. I called their supervisor who took up for the cops wrong doing then Officer Cuello got mad and came to my house and had N and S towing deprive me of my car they took my car to a tow lot that looks like a scrap yard that hidden on 111th Layton Ave where every car on lot is missing parts and now my car is missing the front bumper and they refuse to give me my property back this is a clear sign of harassment and misconduct of law.

Thompson v. Smith

US Supreme Court Says I have the right to travel.

C. JURISDICTION

☑ I am suing for a violation of federal law under 28 U.S.C. § 1331.

OR

☐ I am suing under state law. The state citizenship of the plaintiff(s) is (are) different from the state citizenship of every defendant, and the amount of money at stake in this case (not counting interest and costs) is $ _____.

D. RELIEF WANTED

Describe what you want the Court to do if you win your lawsuit. Examples may include an award of money or an order telling defendants to do something or to stop doing something.

Return my car to me in working condition or give me $3,500 for my car.
Unlawful search and seizure $75,000
Harassment $75,000 Discrimination $75,000
Plus damages and court fee whatever judges decieds.

E. JURY DEMAND

I want a jury to hear my case.

☑ – YES ☐ – NO

I declare under penalty of perjury that the foregoing is true and correct.

Complaint signed this 29 day of January 2024.

Respectfully Submitted,

Signature of Plaintiff

414-676-0029
Plaintiff's Telephone Number

Plaintiff's Email Address

3606 N 2nd lane Milwaukee WI 53212
(Mailing Address of Plaintiff)

(If more than one plaintiff, use another piece of paper.)

REQUEST TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING THE FILING FEE

☑ I **DO** request that I be allowed to file this complaint without paying the filing fee. I have completed a Request to Proceed in District Court without Prepaying the Filing Fee form and have attached it to the complaint.

☐ I **DO NOT** request that I be allowed to file this complaint without prepaying the filing fee under 28 U.S.C. § 1915, and I have included the full filing fee with this complaint.