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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CARLO A. CARRION,	)	No. CV 13-507-VAP(CW)
	)	
Plaintiff,	)	MEMORANDUM AND ORDER
	)	DISMISSING COMPLAINT
v.	)	WITH LEAVE TO AMEND
	)	
MICHELLE THOMAS, et al.,	)	
	)	
Defendants.	)	
_____	)	

The pro se plaintiff is seeking to proceed in forma pauperis on a civil rights complaint. His complaint was lodged on January 23, 2013, and was filed on January 30, 2013 (as docket no. 5), pursuant to the court's Order re Leave to File Action Without Prepayment of Full Filing Fee (docket no. 4). For reasons discussed below, the complaint is dismissed with leave to amend.<sup>1</sup>

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<sup>1</sup> Plaintiff's previous requests to file the same or a similar complaint without prepayment of the filing fee were denied in Carrion v. County of Los Angeles, CV 09-5781-UA, and Carrion v. Los Angeles County, CV 10-5197-UA.

1 I. STANDARD OF REVIEW

2 Complaints such as Plaintiff's are subject to the court's sua  
3 sponte review under provisions of the Prison Litigation Reform Act of  
4 1995 ("PLRA"), Pub. L. No. 104-134, 110 Stat. 1321 (1996). See 28  
5 U.S.C. § 1915A(a). The court shall dismiss such a complaint, at any  
6 time, if the court finds that it (1) is frivolous or malicious, (2)  
7 fails to state a claim on which relief may be granted, or (3) seeks  
8 monetary relief from a defendant immune from such relief. See Lopez  
9 v. Smith, 203 F.3d 1122, 1126-27 and n.7 (9th Cir. 2000)(en banc); 28  
10 U.S.C. § 1915(e)(2)(B)(in forma pauperis complaints).

11 PLRA review for failure to state a claim applies the same  
12 standard applied in reviewing a motion to dismiss for failure to state  
13 a claim under Fed. R. Civ. P. 12(b)(6). See Barren v. Harrington, 152  
14 F.3d 1193, 1194 (9th Cir. 1998). A Rule 12(b)(6) motion to dismiss  
15 for failure to state a claim tests the legal sufficiency of a claim  
16 for relief. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). "In  
17 deciding such a motion, all material allegations of the complaint are  
18 accepted as true, as well as all reasonable inferences to be drawn  
19 from them." Id. "A Rule 12(b)(6) dismissal may be based on either a  
20 'lack of a cognizable legal theory' or 'the absence of sufficient  
21 facts alleged under a cognizable legal theory.'" Johnson v. Riverside  
22 Healthcare System, 534 F.3d 1116, 1121 (9th Cir. 2008)(quoting  
23 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
24 1990)). A complaint may also be dismissed for failure to state a  
25 claim if it discloses a fact or defense that necessarily defeats the  
26 claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29 (9th Cir. 1984)  
27 (citing 2A Moore's Federal Practice ¶ 12.08).

28 Possible failure to state a claim is reviewed under the pleading

1 standard of Fed. R. Civ. P. 8(a)(2), which requires a "short and plain  
2 statement of the claim showing that the pleader is entitled to  
3 relief." Ashcroft v. Iqbal, 556 U.S. 662, 677-78, 129 S. Ct. 1937,  
4 173 L. Ed. 2d 868 (2009)("Iqbal"). The Rule 8 pleading standard "does  
5 not require detailed factual allegations," but does require more than  
6 merely "labels and conclusions or a formulaic recitation of the  
7 elements of a cause of action." Iqbal, 556 U.S. at 678 (citations and  
8 internal quotation marks omitted). Instead, "a complaint must contain  
9 sufficient factual matter, accepted as true, to state a claim to  
10 relief that is plausible on its face." Id. (citations and internal  
11 quotation marks omitted). "A claim has facial plausibility when the  
12 plaintiff pleads factual content that allows the court to draw the  
13 reasonable inference that the defendant is liable for the misconduct  
14 alleged." Id. This plausibility standard is not a probability  
15 requirement, but does ask for more than mere possibility. Id.

16 In Iqbal, the Supreme Court applied a two-pronged approach to  
17 reviewing possible failure to state a claim. Id. at 678-81. First,  
18 the reviewing court may identify statements in a complaint that are  
19 actually conclusions, rather than factual allegations, and, as such,  
20 are not entitled to a presumption of truth. Id. at 678-79. It is the  
21 statements' conclusory nature, rather than any fanciful or nonsensical  
22 nature, "that disentitles them to the presumption of truth." Id. at  
23 681. Second, the court presumes the truth of any remaining "well-  
24 pleaded factual allegations," and determines whether these allegations  
25 and reasonable inferences from them plausibly support a claim for  
26 relief. Id. at 679-80; see also Starr v. Baca, 652 F.3d 1202 (9th  
27 Cir. 2011), cert. denied, 132 S. Ct. 2101 (2012); Hydrick v. Hunter,  
28 669 F.3d 937, 940-41 (9th Cir. 2012)(discussing Iqbal and Starr).

1 If the court finds that a complaint should be dismissed for  
2 failure to state a claim, the court may dismiss with or without leave  
3 to amend. Lopez, 203 F.3d at 1126-30. Leave to amend should be  
4 granted if it appears that defects can be corrected, especially if the  
5 plaintiff is pro se. Id. at 1130-31; see also Cato v. United States,  
6 70 F.3d 1103, 1106 (9th Cir. 1995). If, after careful consideration,  
7 it is clear that a complaint cannot be cured by amendment, the court  
8 may dismiss without leave to amend. Cato, 70 F.3d at 1107-11.

## 9 **II. PLAINTIFF'S CLAIMS**

10 Plaintiff has submitted a 176 page complaint, with supplemental  
11 material, naming over twenty defendants and asserting scores of legal  
12 claims. It is almost impossible to derive a clear and simple  
13 statement of the underlying facts from Plaintiff's complaint, but the  
14 factual basis for his claims appears to be that he was arrested in an  
15 incident that occurred on August 6, 2004, and, after lengthy  
16 proceedings (apparently) ultimately entered a guilty plea, which he  
17 later sought unsuccessfully to withdraw. Plaintiff names as  
18 defendants the County of Los Angeles, various county agencies, judges,  
19 prosecutors, public defenders and police officers. He asserts federal  
20 civil rights claims, state tort claims, and a series of claims citing  
21 federal and state criminal statutes. He seeks damages, the reversal  
22 of his state conviction, and an official investigation of his case.

## 23 **III. GROUNDS FOR DISMISSAL**

24 The complaint contains multiple defects, and is subject to  
25 dismissal on several grounds.

26 First, Plaintiff has failed to provide the "short and plain  
27 statement" of his claim required under Fed. R. Civ. P. 8(a)(2). If  
28 Plaintiff seeks to proceed in this action he must include in his

1 complaint a simple and straightforward statement of his factual  
2 allegations (apart from his legal claims or arguments), so that the  
3 court can clearly see what exactly Plaintiff alleges happened.  
4 Without this, the court cannot even begin to apply the standard of  
5 Ashcroft v. Iqbal to determine whether Plaintiff's factual allegations  
6 plausibly support his legal conclusions. However, even without a  
7 clear statement of facts, certain other fundamental defects in  
8 Plaintiff's complaint are evident, as discussed below.

9       Second, Plaintiff attempts to sue certain defendants who are  
10 immune from suit. Thus, Plaintiff has named as defendants, a number  
11 of judges who were involved in his superior court case. However,  
12 judges are absolutely immune from suit for acts performed in a  
13 judicial capacity. See Antoine v. Byers & Anderson, Inc., 508 U.S.  
14 429, 435 & n.10, 113 S. Ct. 2167, 124 L. Ed. 2d 391 (1993); Mireles v.  
15 Waco, 502 U.S. 9, 9, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991)(per  
16 curiam); Stump v. Sparkman, 435 U.S. 349, 357-60, 98 S. Ct. 1099, 55  
17 L. Ed. 2d 331 (1978); Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir.  
18 1986)(en banc). Judicial immunity bars suit even if a judge is  
19 accused of acting in bad faith, maliciously, corruptly, erroneously,  
20 or in excess of jurisdiction. Mireles, 502 U.S. at 11-13. Plaintiff  
21 also appears to have named several prosecutors as defendants.  
22 However, prosecutors are entitled to absolute immunity from civil  
23 rights suits for damages based on their activities as legal advocates  
24 on behalf of the state in criminal proceedings. See Buckley v.  
25 Fitzsimmons, 509 U.S. 259, 272-73, 113 S. Ct. 2606, 2615, 125 L. Ed.  
26 2d 209 (1993); Imbler v. Pachtman, 424 U.S. 409, 430-31, 96 S. Ct.  
27 984, 995, 47 L. Ed. 2d 128 (1976).

28       Third, Plaintiff asserts claims under a number of federal and

1 state criminal statutes, such as the California Penal Code and Title  
2 18 of the United States Code. These are criminal laws under which the  
3 government may prosecute defendants; they are not civil laws under  
4 which private plaintiffs may sue for damages.

5 Fourth, Plaintiff asserts federal civil rights claims against  
6 persons who are not proper defendants on such claims. To assert a  
7 federal civil rights claim under 42 U.S.C. § 1983, a plaintiff must  
8 plead that a defendant, acting under color of state law, deprived the  
9 plaintiff of a right secured by the federal constitution or laws.  
10 See, e.g., Ortez v. Washington County, 88 F.3d 804, 810 (9th Cir.  
11 1996). Plaintiff has named a number of public defenders as  
12 defendants, but public defenders are not considered persons "acting  
13 under color of law" for purposes of a § 1983 claim. See Polk County  
14 v. Dodson, 454 U.S. 312, 325, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981)  
15 (public defender does not act under color of state law when performing  
16 lawyer's traditional functions as counsel to defendant in criminal  
17 proceeding).

18 Fifth, Plaintiff seeks to invalidate his (apparently) outstanding  
19 state court conviction. However, insofar as Plaintiff's claims, if  
20 true, would necessarily imply the invalidity of his outstanding  
21 conviction, he cannot bring a civil rights action unless and until he  
22 first invalidates the conviction on appeal, through a habeas action,  
23 or otherwise. See Heck v. Humphrey, 512 U.S. 477, 486, 114 S. Ct.  
24 2364, 129 L. Ed. 2d 383 (1994).

25 Despite these defects, Plaintiff may be able to amend his  
26 complaint in order to state claims not barred by the above defects,  
27 such as a claim that police officers subjected him to excessive force  
28 in arresting him. In light of the liberal policies governing

1 amendment of pro se pleadings, Plaintiff will be given an opportunity  
2 to amend the complaint in order to state a cognizable claim against a  
3 proper defendant.

4 **IV. ORDERS:**

5 It is therefore **ORDERED** as follows:

6 1. The Complaint is dismissed with leave to amend.

7 2. On or before March 22, 2013, Plaintiff may file a "First  
8 Amended Complaint" which corrects the defects discussed above and  
9 complies with the following requirements:

10 (a) The "First Amended Complaint" must bear the present case number  
11 "CV 13-507-VAP(CW)."

12 (b) It must be complete in itself and may not incorporate by  
13 reference any part of any prior complaint.

14 (c) Plaintiff may not use "et al." in the caption on page one, but  
15 must name each defendant against whom claims are stated in the  
16 First Amended Complaint. (The clerk uses the caption to make  
17 sure that defendants are correctly listed on the docket.)

18 (d) Plaintiff may not add new parties without the court's permission.

19 3. If Plaintiff files an amended complaint, the court will  
20 issue further orders as appropriate; if not, the magistrate judge will  
21 recommend that this action be dismissed, without prejudice, for  
22 failure to prosecute and/or failure to comply with court orders, as  
23 well as for the reasons stated above.


24 4. The clerk shall serve this Memorandum and Order on  
25 Plaintiff.

26 5. The court again advises Plaintiff to consider seeking  
27 assistance from the Federal "Pro Se" Clinic in this district. The  
28 Clinic offers on-site information and guidance to individuals who are

1 representing themselves in federal civil actions. The Clinic is  
2 administered by a non-profit law firm, Public Counsel, not by the  
3 court. The Clinic is located in the United States Courthouse, at 312  
4 N. Spring Street, Room 525, 5th Floor, Los Angeles, CA 90012. The  
5 Clinic's regular hours are Mondays, Wednesdays, and Fridays, 9:30 a.m.  
6 - 12:00 p.m., and 2:00 p.m. - 4:00 p.m. Much useful information is  
7 also available on the Clinic's website at [www.cacd.uscourts.gov/ProSe](http://www.cacd.uscourts.gov/ProSe).

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DATE: February 20, 2013

  
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CARLA M. WOEHRLE  
United States Magistrate Judge