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NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

J.N.,	)	Case No. CV 14-02428 DDP (PLAx)
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANT ANNE</b>
	)	<b>MARIE SCHUBERT'S MOTION TO</b>
v.	)	<b>DISMISS</b>
	)	
DETECTIVE HEATHER M.	)	[Dkt. No. 40]
HENDRICKSON #429; ANNE MARIE	)	
SCHUBERT; RICK BRAZIEL;	)	
DETECTIVE J. LEROSE #773;	)	
SGT. DUBKE; SACRAMENTO	)	
POLICE DEPARTMENT; CITY OF	)	
SACRAMENTO; TEN UNKNOWN	)	
NAMED DEFENDANTS	)	
	)	
Defendants.	)	
	)	
_____	)	

Presently before the Court is Defendant Anne Marie Schubert's Motion to Dismiss for Failure to State a Claim. Having heard oral arguments and considered the parties' submissions, the Court adopts the following order.

**I. BACKGROUND**

Plaintiff J.N. brought a § 1983 action against various members of the Sacramento Police Department ("SPD"), the SPD, the City of Sacramento, unknown named defendants ("Does"), and Defendant Anne

1 Marie Schubert ("Schubert"), who is a Deputy District Attorney for  
2 the County of Sacramento. (Third Am. Compl. at 3-5.) Plaintiff  
3 contends that Defendants' investigation, arrest, and prosecution of  
4 him was malicious and not supported by probable cause. (See id. at  
5 2-3; 33-34; 41-45.) He further contends that Defendants fabricated  
6 evidence and suppressed exculpatory evidence during the  
7 prosecution. (See id. at 3; 33-34; 41-45.)

8 Plaintiff originally filed his complaint on March 31, 2014.  
9 (Dkt. No. 1.) By the parties' stipulation, Plaintiff filed his  
10 Third Amended Complaint on March 15, 2015, in which he added  
11 Defendant Schubert. (See Dkt. No. 29, Third Am. Compl.) Defendant  
12 Schubert has now filed a Motion to Dismiss. (Dkt. No. 40.)

## 13 **II. LEGAL STANDARD**

14 A 12(b)(6) motion to dismiss requires a court to determine the  
15 sufficiency of the plaintiff's complaint and whether it contains a  
16 "short and plain statement of the claim showing that the pleader is  
17 entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Rule  
18 12(b)(6), a court must (1) construe the complaint in the light most  
19 favorable to the plaintiff, and (2) accept all well-pleaded factual  
20 allegations as true, as well as all reasonable inferences to be  
21 drawn from them. See Sprewell v. Golden State Warriors, 266 F.3d  
22 979, 988 (9th Cir. 2001), amended on denial of reh'g, 275 F.3d 1187  
23 (9th Cir. 2001); Pareto v. F.D.I.C., 139 F.3d 696, 699 (9th Cir.  
24 1998).

25 In order to survive a 12(b)(6) motion to dismiss, the  
26 complaint must "contain sufficient factual matter, accepted as  
27 true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009) (quoting Bell Atl.

1 Corp. v. Twombly, 550 U.S. 544, 570 (2007)). However,  
2 "[t]hreadbare recitals of the elements of a cause of action,  
3 supported by mere conclusory statements, do not suffice." Id. at  
4 678. Dismissal is proper if the complaint "lacks a cognizable  
5 legal theory or sufficient facts to support a cognizable legal  
6 theory." Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097,  
7 1104 (9th Cir. 2008); see also Twombly, 550 U.S. at 561-63  
8 (dismissal for failure to state a claim does not require the  
9 appearance, beyond a doubt, that the plaintiff can prove "no set of  
10 facts" in support of its claim that would entitle it to relief).

11 A complaint does not suffice "if it tenders 'naked  
12 assertion[s]' devoid of 'further factual enhancement.'" Iqbal, 556  
13 U.S. at 678 (quoting Twombly, 550 U.S. at 556). "A claim has  
14 facial plausibility when the plaintiff pleads factual content that  
15 allows the court to draw the reasonable inference that the  
16 defendant is liable for the misconduct alleged." Id. The Court  
17 need not accept as true "legal conclusions merely because they are  
18 cast in the form of factual allegations." Warren v. Fox Family  
19 Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003).

### 20 **III. DISCUSSION**

21 Defendant Schubert has filed a Motion to Dismiss based on two  
22 grounds: first, that she is entitled to absolute prosecutorial  
23 immunity; and second, that the claims against her are time barred.  
24 (Def. Mot. Dismiss at 1.)

#### 25 **A. Absolute Prosecutorial Immunity**

26 Defendant Schubert argues that any allegation against her in  
27 Plaintiff's Third Amended Complaint, such as signing an arrest  
28 warrant declaration, "relates to her actions as a Deputy District

1 Attorney involved in preparing to prosecute and/or the actual  
2 prosecution of Plaintiff for various criminal violations," for  
3 which Defendant is immune. (Def.'s Mot. Dismiss at 3.) Plaintiff  
4 argues that Defendant Schubert is not protected by absolute  
5 immunity "because Ms. Schubert was performing the function of a  
6 'complaining witness,' . . . when she signed the arrest warrant  
7 declaration," relying on Kalina v. Fletcher, 522 U.S. 118, 131  
8 (1997). (Pl.'s Opp'n Mot. Dismiss at 3 (citation omitted).)  
9 Defendant Schubert responds that Kalina does not support  
10 Plaintiff's argument because "Plaintiff does not allege or offer  
11 any evidence that Schubert authored a similar type of document as  
12 that of the prosecutor in Kalina or that Schubert personally  
13 vouched for the information provided in the attached report  
14 authored by Detective Hendrickson." (Def.'s Reply to Pl.'s Opp'n  
15 Mot. Dismiss at 4.)

16 Courts take a functional approach to analyzing a prosecutor's  
17 claim of absolute immunity. Immunity decisions are based on "the  
18 nature of the function performed, not the identity of the actor who  
19 performed it." Kalina, 522 U.S. at 127 (internal quotations and  
20 citation omitted). The official seeking absolute immunity bears  
21 the burden of showing that such immunity is justified for the  
22 function in question. Buckley v. Fitzsimmons, 509 U.S. 259, 269  
23 (1993).

24 Prosecutors are absolutely immune from § 1983 damages  
25 liability for "initiating a prosecution and in presenting the  
26 State's case." Imbler v. Pachtman, 424 U.S. 409, 431 (1976).  
27 However, "[a] prosecutor's administrative duties and those  
28 investigatory functions that do not relate to an advocate's

1 preparation for the initiation of a prosecution or for judicial  
2 proceedings are not entitled to absolute immunity." Buckley, 509  
3 U.S. at 273. Prosecutors are accorded only qualified immunity when  
4 performing investigatory as opposed to advocacy functions. See  
5 Herb Hallman Chevrolet, Inc. v. Nash-Holmes, 169 F.3d 636 (9th Cir.  
6 1999).

7 In the present case, Plaintiff alleges that Defendant Schubert  
8 is not immune for her conduct in executing and presenting to the  
9 Superior Court of California a declaration in support of an arrest  
10 warrant. (Third Amended Compl. ¶¶ 69-70.) The Third Amended  
11 Complaint does not attach the declaration, but Plaintiff states  
12 that in the declaration, Schubert

13 declared under penalty of perjury that pursuant to her  
14 employment as a Deputy District Attorney for the County of  
15 Sacramento she has "been assigned to investigate  
16 allegations that [plaintiff J.N.] did commit the crime(s)  
17 as set forth in the attached complaint" and that she had  
18 contacted persons having knowledge of said offenses and who  
19 prepared written reports and/or statements, and/or had  
20 received and read written reports and/or statements  
21 prepared by others known to her to be law enforcement  
22 officers, all of which reports and/or statements are  
23 included in a report consisting of 6 pages attached to the  
24 declaration as Exhibit I and incorporated by reference  
25 thereto.

26 (Third Am. Compl. ¶ 69.) The six-page report attached to  
27 Schubert's declaration was written by Defendant Hendrickson, an SPD  
28 detective. (Id. ¶ 71.) The six-page report is the document that  
29 Plaintiff alleges contained false statements and  
30 misrepresentations, as well as omitted exculpatory information.  
31 (Id. ¶¶ 71-73.) Plaintiff alleges that but for these problems with  
32 the report, "there would not have been adequate evidence to support  
33 probable cause for issuance of the arrest warrant or search  
34 warrant." (Id. ¶ 74.) Plaintiff relies on Kalina to show

1 Defendant Schubert is not entitled to immunity because Schubert  
2 attached the false report to her sworn declaration. (Pl.'s Opp'n  
3 Mot. Dismiss at 3.)

4 In Kalina, the Court concluded that a prosecutor who completed  
5 a "Certificate for Determination of Probable Cause" in conjunction  
6 with an arrest warrant had engaged in "the evidentiary component of  
7 an application for an arrest warrant" and therefore had acted as a  
8 witness. Kalina, 522 U.S. at 129, 131. The prosecutor there had  
9 certified under penalty of perjury to the truth of the factual  
10 matters alleged to support probable cause. Id. at 130-31.

11 Here, Defendant Schubert attached a six-page report with  
12 factual statements written and sworn by Detective Hendrickson to  
13 Schubert's own sworn declaration. (See Third Am. Compl. ¶¶ 22-23,  
14 25.) But there is nothing to indicate that Schubert acted as a  
15 witness in executing her arrest warrant declaration. Schubert did  
16 not "personally attest[] to the truth of the averments," see  
17 Kalina, 522 U.S. at 129, in Hendrickson's report. Instead,  
18 Schubert stated under penalty of perjury that she had "contacted  
19 persons having knowledge of said offenses and who prepared written  
20 reports and/or statements, and/or had received and read reports  
21 and/or statements prepared by others known by her to be law  
22 enforcement officers." (Third Amended Compl. ¶ 69.) These other  
23 persons were the ones attesting to the truth of the report alleged  
24 by Plaintiff to have violated his rights. Thus, because Schubert's  
25 statements are those of an advocate and not a witness, Schubert is  
26 entitled to absolute prosecutorial immunity for her actions as  
27 alleged in the Third Amended Complaint.

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1           **B. Statute of Limitations**

2           Defendant Schubert alleges that Plaintiff's adding her to the  
3 case for the first time in the Third Amended Complaint is time  
4 barred because the amendment does not relate back to the filing of  
5 the first complaint. (Def.'s Mot. Dismiss at 4.) Plaintiff argues  
6 that the claim does relate back because the initial complaint  
7 alleged harms – such as the arrest warrant's issuance – done by Doe  
8 defendants, and that the amendment merely added Schubert as a  
9 former Doe defendant. (Pl.'s Opp'n Mot. Dismiss at 5.)


10           Because the Court finds that Defendant Schubert is protected  
11 by absolute prosecutorial immunity for the actions the Third  
12 Amended Complaint alleges Schubert did that resulted in Plaintiff's  
13 harm, the Court does not resolve the time bar issue.

14           **IV. CONCLUSION**

15           For the reasons stated above, Defendant Schubert's Motion to  
16 Dismiss is GRANTED with prejudice.

17  
18 IT IS SO ORDERED.

19  
20  
21 Dated: September 22, 2015

  
HON. DEAN D. PREGERSON  
United States District Judge