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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NORRIS DAJON MILLER,
Plaintiff,
v.
GEORGE MORRIS,
Defendant.

Case No. CV 17-2966 SJO (SS)
**MEMORANDUM DECISION AND ORDER
DISMISSING COMPLAINT WITH LEAVE
TO AMEND**

**I.
INTRODUCTION**

On April 19, 2017, Norris Dajon Miller ("Plaintiff"), a California state prisoner proceeding pro se, filed a civil rights complaint pursuant 42 U.S.C. § 1983 ("Complaint"). Plaintiff summarily alleges that Deputy District Attorney George Morris is liable for malicious prosecution and false imprisonment in violation of his Sixth and Fourteenth Amendment rights. (Id. at 6) (continuous pagination).

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1 Congress mandates that district courts perform an initial
2 screening of complaints in civil actions where a prisoner seeks
3 redress from a governmental entity or employee. 28 U.S.C.
4 § 1915A(a). This Court may dismiss such a complaint, or any portion
5 thereof, before service of process if the complaint (1) is
6 frivolous or malicious, (2) fails to state a claim upon which
7 relief can be granted, or (3) seeks monetary relief from a defendant
8 who is immune from such relief. 28 U.S.C. § 1915A(b)(1-2); see
9 also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir. 2000)
10 (en banc). For the reasons stated below, the Complaint is DISMISSED
11 with leave to amend.¹

12 13 II.

14 ALLEGATIONS OF THE COMPLAINT

15
16 The only Defendant sued in this matter is Deputy District
17 Attorney Morris. (Complaint at 4). Morris is sued in his
18 individual capacity only. (Id. at 3).

19
20 Plaintiff states that in an underlying state criminal matter,
21 he was assaulted by a man named Thomas Brown and "was put in jail
22 for it" on February 10, 2016, even though Plaintiff was acting in
23 self-defense. (Id. at 4). Morris "falsely accused" Plaintiff of
24 a crime (or crimes) he did not commit, which Plaintiff does not
25 specifically identify. (Id.). On June 20, 2016, Morris dismissed
26

27 ¹ A magistrate judge may dismiss a complaint with leave to amend
28 without the approval of a district judge. See McKeever v. Block,
932 F.2d 795, 798 (9th Cir. 1991).

1 the charge(s) against Plaintiff. (Id.). Plaintiff states that he
2 was "falsely imprisoned" for four months and ten days as a result
3 of those charges, i.e., from the day he was arrested to the day
4 the charges were dismissed. (Id.). Plaintiff seeks \$63,000,000
5 in monetary damages for "emotional stress, heartache, [and] pain
6 and suffering," as well as "false imprisonment."² (Id. at 5).

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10 ² In another malicious prosecution action brought by Plaintiff in
11 this Court, filed on the same day as the instant Complaint,
12 Plaintiff raised similar claims against another prosecutor, Deputy
13 District Attorney Lily Keenan. See Miller v. Keenan, C.D. Cal.
14 Case No. 17-2969 SJO (SS) (the "Keenan Complaint"). The Court
15 takes judicial notice of Plaintiff's other cases pending in this
16 Court. See In re Korean Air Lines Co., Ltd., 642 F.3d 685, 689
17 n.1 (9th Cir. 2011) (a court may take judicial notice of a court's
18 own records in other cases and the records of other courts).

19 It is unclear whether the state court criminal proceedings at issue
20 in the instant action and the Keenan Complaint are related,
21 identical, or entirely separate. However, in the Keenan Complaint,
22 as here, Plaintiff alleges that he was arrested on February 10,
23 2016 and held continuously in custody thereafter. (See Keenan
24 Complaint, Dkt. No. 1, at 4). According to the Keenan Complaint,
25 a jury ultimately convicted Plaintiff of three counts of assault
26 (against victims Thomas Sotiriadis, Karen Sotiriadis, and Michael
27 Haynes) and one count of resisting an executive officer (City of
28 Hawthorne Police Officer John Dixon). The same jury acquitted
Plaintiff of one count of attempting to rob Haynes and of one count
of resisting City of Hawthorne Police Officer Sean Judd. (Id. at
10-11).

Plaintiff is suing Keenan in that parallel action for "falsely
accus[ing] [him] of crimes that [he] did not commit," i.e., the
two counts that resulted in acquittals. (Id. at 3). Plaintiff
further claims that he was wrongfully held in jail pending trial
on those counts for four months and nineteen days, from February
10, 2016 to June 29, 2016. (Id. at 5).

The Court cannot determine from the meager facts alleged in these
two actions whether Brown's alleged assault on Plaintiff occurred
during the same incident in which Plaintiff assaulted Thomas and
Karen Sotiriadis and Hayes. However, the period of incarceration
at issue in this action is entirely encompassed by the period of
incarceration at issue in the Keenan Complaint.

1 under state law where the defendant "continu[es] to prosecute a
2 lawsuit discovered to lack probable cause." Zamos, 32 Cal. 4th at
3 970.

4
5 Nonetheless, the Ninth Circuit has determined that a civil
6 rights plaintiff may bring a federal claim for malicious
7 prosecution under section 1983 when certain conditions are met. To
8 state a federal claim for malicious prosecution, a plaintiff must
9 establish not only that a claim, brought without probable cause
10 and initiated with malice, terminated in plaintiff's favor, but
11 also that the prosecution was conducted "for the purpose of denying
12 [the accused] equal protection or another specific constitutional
13 right.'" Lacey, 693 F.3d at 919 (quoting Freeman v. City of Santa
14 Ana, 68 F.3d 1180, 1189 (9th Cir. 1995)). Malicious prosecution
15 actions "are not limited to suits against prosecutors but may
16 [also] be brought . . . against other persons who have wrongfully
17 caused the charges to be filed." Awabdy v. City of Adelanto, 368
18 F.3d 1062, 1066 (9th Cir. 2004).

19
20 However, not every action taken by a prosecutor in an
21 abandoned or unsuccessful prosecution will subject the prosecutor
22 to suit, even when the act is "malicious or dishonest." Genzler
23 v. Longanbach, 410 F.3d 630, 637 (9th Cir. 2005). The doctrine of
24 "[p]rosecutorial immunity applies to § 1983 claims." Garmon v.
25 Cnty. of Los Angeles, 828 F.3d 837, 842 (9th Cir. 2016). Pursuant
26 to that doctrine, "[s]tate prosecutors are absolutely immune from
27 § 1983 actions when performing functions 'intimately associated
28 with the judicial phase of the criminal process,' [Imbler v.

1 Pachtman, 424 U.S. 409, 430 (1976)], or, phrased differently, 'when
2 performing the traditional functions of an advocate.'" Garmon,
3 828 F.3d at 843 (quoting Kalina v. Fletcher, 522 U.S. 118, 131
4 (1997)).

5
6 Accordingly, a prosecutor is absolutely immune from suit for
7 "'initiating a prosecution' and 'presenting a state's case,' and
8 during 'professional evaluation of the evidence assembled by the
9 police and appropriate preparation for its presentation at trial
10 . . . after a decision to seek an indictment has been made.'" Garmon,
11 828 F.3d at 843 (quoting Buckley v. Fitzsimmons, 509 U.S.
12 259, 273 (1993)); see also Milstein v. Cooley, 257 F.3d 1004, 1012
13 (9th Cir. 2001) ("Initiating a prosecution has consistently been
14 identified as a function within a prosecutor's role as an
15 advocate."); Mishler v. Clift, 191 F.3d 998, 1008 (9th Cir. 1999)
16 ("Filing charges and initiating prosecution are functions that are
17 integral to a prosecutor's work."). A prosecutor is also protected
18 by absolute immunity in the "preparation of an arrest warrant,"
19 during "appearances before a grand jury," "in a probable cause
20 hearing," and at trial. Lacey, 693 F.3d at 933 (citing cases);
21 see also Milstein, 257 F.3d at 1012 ("Appearing in court to argue
22 a motion is a quintessential act of advocacy").

23
24 Absolute immunity applies even if it "'leave[s] the genuinely
25 wronged defendant without civil redress against a prosecutor whose
26 malicious or dishonest action deprives him of liberty.'" Genzler,
27 410 F.3d at 637 (quoting Imbler, 424 U.S. at 432). However,
28 prosecutors are entitled only to "qualified immunity, rather than

1 absolute immunity, when they perform administrative functions, or
2 'investigative functions normally performed by a detective or
3 police officer.'" Genzler, 410 F.3d at 636 (quoting Kalina, 522
4 U.S. at 126).³

5
6 Courts look to the "nature of the function performed" when
7 determining if a prosecutor's actions are those of an advocate,
8 which are protected by absolute immunity, or of an administrator
9 or investigator, which are not. Garmon, 828 F.3d at 843 (quoting
10 Buckley, 509 U.S. at 269). For example, "decisions to hire,
11 promote, transfer and terminate" employees, "which do not affect
12 the prosecutor's role in any particular matter," are generally
13 deemed administrative functions not protected by absolute immunity.
14 Lacey, 693 F.3d at 931. Similarly, "[a]bsolute immunity does not
15 apply when a prosecutor 'gives advice to police during a criminal
16 investigation,' 'makes statements to the press,' or 'acts as a
17 complaining witness in support of a[n arrest] warrant
18 application.'" Garmon, 828 F.3d at 843 (quoting Van de Kamp v.
19 Goldstein, 555 U.S. 335, 343 (2009) (brackets in original; emphasis
20 added)); see also Milstein, 257 F.3d at 1101 (filing a false crime
21

22 ³ "The doctrine of qualified immunity protects government officials
23 'from liability for civil damages insofar as their conduct does
24 not violate clearly established statutory or constitutional rights
25 of which a reasonable person would have known.'" Pearson v.
26 Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald,
27 457 U.S. 800, 818 (1982)). In analyzing whether qualified immunity
28 applies, a court must determine "whether, taken in the light most
favorable to [the plaintiff], Defendants' conduct amounted to a
constitutional violation, and . . . whether or not the right was
clearly established at the time of the violation." Bull v. City
and Cnty. of San Francisco, 595 F.3d 964, 971 (9th Cir. 2010)
(internal quotation marks omitted; brackets in original).

1 report is not protected by absolute immunity). Absolute immunity
2 also does not apply if a prosecutor knowingly fabricates evidence
3 by soliciting falsehoods from others, such as by obtaining false
4 statements from purported witnesses or "shopping for a dubious
5 expert opinion." Id.

6
7 Here, Plaintiff's only allegation against Morris is that he
8 "falsely accused" him of a crime or crimes he did not commit. It
9 is unclear from the Complaint what role Morris had in Plaintiff's
10 prosecution, or what he did in the performance of that role. The
11 Complaint does not explain how Morris falsely accused Plaintiff,
12 or when, or whether Plaintiff would have been entitled to release
13 from custody if Morris had dismissed the charges earlier. For
14 example, the Complaint does not state whether Plaintiff was
15 arrested pursuant to a warrant that Morris may have prepared, when
16 or how he was charged, whether Morris was the only prosecutor who
17 appeared in his case, or whether Morris had a more limited role.

18
19 Depending on the "nature" of the acts Morris allegedly
20 committed, Morris may or may not be protected by absolute immunity.
21 For example, it is possible that Plaintiff believes that Morris
22 "falsely accused" him simply by filing charges against him to
23 initiate the underlying criminal action. If so, such "judicial"
24 actions would appear to be protected from suit by absolute
25 prosecutorial immunity. However, it is also possible that
26 Plaintiff may have grounds to assert a claim against Morris that
27 would not be subject to absolute immunity.

1 Additionally, even if Plaintiff were able to allege facts that
2 would support a malicious prosecution claim against Morris that
3 would not be barred by absolute immunity, the Complaint does not
4 allege any facts showing that the prosecution was for the purpose
5 of denying Plaintiff equal protection or some other constitutional
6 right, as required for a federal malicious prosecution claim under
7 § 1983. Lacey, 693 F.3d at 919. Accordingly, the Complaint is
8 dismissed, with leave to amend. Plaintiff is cautioned that he
9 may not allege claims for which he has no factual or legal basis.

10
11 **B. The Complaint Fails To State A Claim For False Imprisonment**

12
13 In his request for relief, Plaintiff seeks monetary damages
14 from Morris for "false imprisonment," although he does not explain
15 why or how he believes that Morris is liable for his pretrial
16 detention. As with Plaintiff's malicious prosecution claim,
17 whether Morris is protected by absolute immunity for his acts will
18 depend on the nature of those acts. Furthermore, because
19 Plaintiff's pre-trial detention here fully overlapped with his
20 detention on charges for which he was eventually convicted in the
21 Keenan matter, it seems doubtful that Plaintiff will be able to
22 show that he suffered any damages by his pre-trial incarceration.
23 Even if Plaintiff had not been detained on the counts that Morris
24 dismissed, he would still have been lawfully incarcerated pre-trial
25 on the four counts for which he was ultimately convicted in the
26 Keenan matter.

1 "False arrest and false imprisonment overlap; the former is a
2 species of the latter." Wallace v. Kato, 549 U.S. 384, 388 (2007).
3 "To prevail on his § 1983 claim for false arrest and imprisonment,
4 [Plaintiff] would have to demonstrate that there was no probable
5 cause to arrest him." Cabrera v. City of Huntington Park, 159 F.3d
6 374, 380 (9th Cir. 1998). Following arrest, "a [pretrial] detainee
7 [also] has 'a constitutional right to be free from continued
8 detention after it was or should have been known that the detainee
9 was entitled to release.'" Lee v. City of Los Angeles, 250 F.3d
10 668, 683 (9th Cir. 2001) (internal quotation marks and citation
11 omitted). The "loss of liberty caused by an individual's mistaken
12 [pretrial] incarceration 'after the lapse of a certain amount of
13 time' gives rise to a [false imprisonment] claim under the Due
14 Process Clause of the Fourteenth Amendment." Lee, 250 F.3d at 683
15 (quoting Baker, 443 U.S. at 145). However, "[t]he Constitution
16 does not guarantee that only the guilty will be arrested. If it
17 did, § 1983 would provide a cause of action for every defendant
18 acquitted -- indeed, for every suspect released," which it does
19 not. Baker v. McCollan, 443 U.S. 137, 145 (1979).

20
21 Plaintiff's false imprisonment claim against Morris, to the
22 extent that he is attempting to assert one, is largely intertwined
23 with his malicious prosecution claim, as is the extent of Morris's
24 entitlement to absolute prosecutorial immunity. If the basis for
25 the false imprisonment claim is simply that Morris filed criminal
26 charges in reliance on evidence provided by the police, the
27 charging decision would appear to be protected from suit by
28 absolute immunity. However, if Plaintiff is able to allege facts

1 showing, for example, that Morris knowingly fabricated or solicited
2 false evidence to keep Plaintiff in custody prior to trial, and
3 that but for that fabrication, there was no other impediment to
4 Plaintiff's entitlement to release from pre-trial custody, it is
5 possible that such acts may not be protected by absolute immunity.
6 In light of the convictions arising from the actions at issue in
7 the Keenan Complaint, and the fact that the pre-trial period of
8 which Plaintiff complains here is entirely encompassed by the
9 period at issue in the Keenan Complaint, the Court doubts that
10 Plaintiff will be able to assert a false imprisonment claim.
11 However, out of an abundance of caution, the Complaint is
12 dismissed, with leave to amend. Plaintiff is cautioned that he
13 may not allege claims for which he has no factual or legal basis.

14 15 IV.

16 CONCLUSION

17
18 For the reasons stated above, the Complaint is dismissed with
19 leave to amend. If Plaintiff still wishes to pursue this action,
20 he is granted **thirty (30) days** from the date of this Memorandum
21 and Order within which to file a First Amended Complaint. In any
22 amended complaint, the Plaintiff shall cure the defects described
23 above. **Plaintiff shall not include new defendants or new**
24 **allegations that are not reasonably related to the claims asserted**
25 **in the original complaint.** The First Amended Complaint, if any,
26 shall be complete in itself and shall bear both the designation
27 "First Amended Complaint" and the case number assigned to this
28

1 action. It shall not refer in any manner to any previously filed
2 complaint in this matter.

3
4 In any amended complaint, Plaintiff should confine his
5 allegations to those operative facts supporting each of his claims.
6 Plaintiff is advised that pursuant to Federal Rule of Civil
7 Procedure 8(a), all that is required is a "short and plain statement
8 of the claim showing that the pleader is entitled to relief."

9 **Plaintiff is strongly encouraged to utilize the standard civil**
10 **rights complaint form when filing any amended complaint, a copy of**
11 **which is attached.** In any amended complaint, Plaintiff should
12 identify the nature of each separate legal claim and make clear
13 what specific factual allegations support each of his separate
14 claims. Plaintiff is strongly encouraged to keep his statements
15 concise and to omit irrelevant details. **It is not necessary for**
16 **Plaintiff to cite case law, include legal argument, or attach**
17 **exhibits at this stage of the litigation.** Plaintiff is also advised
18 to omit any claims for which he lacks a sufficient factual basis.

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