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

DELVON C. JACKSON,

Plaintiff,

v.

SARAH JONES, *et al.*,

Defendants.

Case No. CV 17-07843 GW (AFM)

**ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND**

On October 26, 2017, plaintiff filed a Complaint in this *pro se* civil rights action pursuant to 42 U.S.C. § 1983. He subsequently was granted leave to proceed *in forma pauperis*. The Complaint names as defendants Sarah Jones, a probation officer in the County of Los Angeles, in her individual capacity; and the County of Los Angeles (“County”). (ECF No. 1 at 1-2.) The Complaint arises from incidents that occurred while plaintiff was on “supervised probation” following his release from state prison on April 16, 2015. (*Id.* at 2.) Defendant Jones in Los Angeles, California, was assigned to supervise plaintiff’s probation. (*Id.*) Plaintiff raises four claims, all against both Jones and the County. In his First Claim, plaintiff alleges that his right not to be forced to incriminate himself was violated when he was “incarcerated” after he “chose to exercise his Fifth Amendment right.” (*Id.* at 20.) In his Second Claim, plaintiff alleges a substantive due process claim for the

1 alleged denial of his right to “invoke the Fifth Amendment.” (*Id.*) In his Third  
2 Claim, plaintiff alleges a procedural due process claim arising from his  
3 incarceration “without the proper due process procedures.” (*Id.* at 20-21.) In his  
4 Fourth Claim, plaintiff alleges a claim for cruel and unusual punishment under the  
5 Eighth Amendment arising from his “unjust” treatment “while in the custody of  
6 defendants and incarcerated without just cause.” (*Id.* at 21.) Plaintiff seeks  
7 compensatory and punitive damages. (*Id.*)

8 The Court has screened the Complaint prior to ordering service for purposes  
9 of determining whether the action is frivolous or malicious; or fails to state a claim  
10 on which relief may be granted; or seeks monetary relief against a defendant who is  
11 immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The Court’s screening of  
12 the pleading under the foregoing statute is governed by the following standards. A  
13 complaint may be dismissed as a matter of law for failure to state a claim for two  
14 reasons: (1) lack of a cognizable legal theory; or (2) insufficient facts under a  
15 cognizable legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699  
16 (9th Cir. 1990); *see also Rosati v. Igbino*, 791 F.3d 1037, 1039 (9th Cir. 2015)  
17 (when determining whether a complaint should be dismissed for failure to state a  
18 claim under 28 U.S.C. § 1915(e)(2), the court applies the same standard as applied  
19 in a motion to dismiss pursuant to Rule 12(b)(6)). In determining whether the  
20 pleading states a claim on which relief may be granted, its allegations of material  
21 fact must be taken as true and construed in the light most favorable to plaintiff. *See*  
22 *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the “tenet  
23 that a court must accept as true all of the allegations contained in a complaint is  
24 inapplicable to legal conclusions.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).  
25 Nor is the Court “bound to accept as true a legal conclusion couched as a factual  
26 allegation.” *Wood v. Moss*, 134 S. Ct. 2056, 2065 n.5 (2014) (citing *Iqbal*, 556  
27 U.S. at 678). Rather, a court first “discounts conclusory statements, which are not  
28 entitled to the presumption of truth, before determining whether a claim is

1 plausible.” *Salameh v. Tarsadia Hotel*, 726 F.3d 1124, 1129 (9th Cir. 2013). Then,  
2 “dismissal is appropriate where the plaintiff failed to allege enough *facts* to state a  
3 claim to relief that is plausible on its face.” *Yagman v. Garcetti*, 852 F.3d 859, 863  
4 (9th Cir. 2017) (internal quotation marks omitted, emphasis added).

5 Further, since plaintiff is appearing *pro se*, the Court must construe the  
6 allegations of the pleading liberally and must afford plaintiff the benefit of any  
7 doubt. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010); *see also Alvarez v.*  
8 *Hill*, 518 F.3d 1152, 1158 (9th Cir. 2008) (because plaintiff was proceeding *pro se*,  
9 “the district court was required to ‘afford [him] the benefit of any doubt’ in  
10 ascertaining what claims he ‘raised in his complaint’”) (alteration in original).  
11 However, the Supreme Court has held that “a plaintiff’s obligation to provide the  
12 ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions,  
13 and a formulaic recitation of the elements of a cause of action will not do. . . .  
14 Factual allegations must be enough to raise a right to relief above the speculative  
15 level . . . on the assumption that all the allegations in the complaint are true (even if  
16 doubtful in fact).” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
17 (internal citations omitted, alteration in original); *see also Iqbal*, 556 U.S. at 678  
18 (To avoid dismissal for failure to state a claim, “a complaint must contain sufficient  
19 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its  
20 face.’ . . . A claim has facial plausibility when the plaintiff pleads factual content  
21 that allows the court to draw the reasonable inference that the defendant is liable for  
22 the misconduct alleged.” (internal citation omitted)).

23 In addition, Fed. R. Civ. P. 8(a) states:

24 A pleading that states a claim for relief must contain:  
25 (1) a short and plain statement of the grounds for the  
26 court’s jurisdiction . . . ; (2) a short and plain statement of  
27 the claim showing that the pleader is entitled to relief; and  
28 (3) a demand for the relief sought, which may include  
relief in the alternative or different types of relief.

1 (Emphasis added). Further, Rule 8(d)(1) provides: “Each allegation must be  
2 simple, concise, and direct. No technical form is required.” Although the Court  
3 must construe a *pro se* plaintiff’s pleadings liberally, a plaintiff nonetheless must  
4 allege a minimum factual and legal basis for each claim that is sufficient to give  
5 each defendant fair notice of what plaintiff’s claims are and the grounds upon  
6 which they rest. *See, e.g., Brazil v. United States Dep’t of the Navy*, 66 F.3d 193,  
7 199 (9th Cir. 1995); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991) (a  
8 complaint must give defendants fair notice of the claims against them). If a  
9 plaintiff fails to clearly and concisely set forth factual allegations sufficient to  
10 provide defendants with notice of which defendant is being sued on which theory  
11 and what relief is being sought against them, the pleading fails to comply with Rule  
12 8. *See, e.g., McHenry v. Renne*, 84 F.3d 1172, 1177-79 (9th Cir. 1996); *Nevijel v.*  
13 *Northcoast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981). A claim has  
14 “substantive plausibility” if a plaintiff alleges “simply, concisely, and directly [the]  
15 events” that entitle him to damages. *Johnson v. City of Shelby*, 135 S. Ct. 346, 347  
16 (2014). Failure to comply with Rule 8 constitutes an independent basis for  
17 dismissal of a pleading that applies even if the claims are not found to be wholly  
18 without merit. *See McHenry*, 84 F.3d at 1179; *Nevijel*, 651 F.2d at 673.

19 Following careful review of the Complaint, the Court finds that it fails to  
20 comply with Rule 8 because it fails to state a short and plain statement of each  
21 claim that is sufficient to give each defendant fair notice of what plaintiff’s claims  
22 are and the grounds upon which they rest. In addition, its allegations appear  
23 insufficient to state any claim upon which relief may be granted. Accordingly, the  
24 Complaint is dismissed with leave to amend. *See Rosati*, 791 F.3d at 1039 (“A  
25 district court should not dismiss a *pro se* complaint without leave to amend unless it  
26 is absolutely clear that the deficiencies of the complaint could not be cured by  
27 amendment.”) (internal quotation marks omitted).

1           **If plaintiff desires to pursue this action, he is ORDERED to file a First**  
2 **Amended Complaint no later than thirty (30) days after the date of this Order,**  
3 **remediating the deficiencies discussed below.** Further, plaintiff is admonished  
4 that, if he fails to timely file a First Amended Complaint, or fails to remedy the  
5 deficiencies of this pleading as discussed herein, the Court will recommend that this  
6 action be dismissed without leave to amend and with prejudice.<sup>1</sup>

7  
8 **A.   Claims against the County**

9           The Complaint purports to raise all four claims against the County.  
10 However, in order to state a federal civil rights claim against a local government  
11 entity such as the County, the local government entity “may not be sued under  
12 § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when  
13 execution of a government’s policy or custom, whether made by its lawmakers or  
14 by those whose edicts or acts may fairly be said to represent official policy, inflicts  
15 the injury that the government as an entity is responsible under § 1983.” *Monell v.*  
16 *Dep’t of Social Servs. of City of New York*, 436 U.S. 658, 694 (1978); *see also*  
17 *Connick v. Thompson*, 563 U.S. 51, 60 (2011) (“local governments are responsible  
18 only for their own illegal acts”).

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20 \_\_\_\_\_  
21 <sup>1</sup> Plaintiff is advised that this Court’s determination herein that the allegations in  
22 the Complaint are insufficient to state a particular claim should not be seen as  
23 dispositive of that claim. Accordingly, although this Court believes that you have  
24 failed to plead sufficient factual matter in your pleading, accepted as true, to state a  
25 claim to relief that is plausible on its face, you are not required to omit any claim or  
26 defendant in order to pursue this action. However, if you decide to pursue a claim  
27 in a First Amended Complaint that this Court has found to be insufficient, then this  
28 Court, pursuant to the provisions of 28 U.S.C. § 636, ultimately may submit to the  
assigned district judge a recommendation that such claim be dismissed with  
prejudice for failure to state a claim, subject to your right at that time to file  
Objections with the district judge as provided in the Local Rules Governing Duties  
of Magistrate Judges.

1 Here, the Complaint fails to set forth any factual allegations that a specific  
2 policy or custom promulgated by the County was the “actionable cause” of a  
3 specific constitutional violation. *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128,  
4 1146 (9th Cir. 2012) (“Under *Monell*, a plaintiff must also show that the policy at  
5 issue was the ‘actionable cause’ of the constitutional violation, which requires  
6 showing both but for and proximate causation.”). In addition, liability against the  
7 County arising from an improper custom or policy may not be premised on an  
8 isolated incident such as plaintiff’s one-time incarceration as alleged in the  
9 Complaint. *See, e.g., Trevino v. Gates*, 99 F.3d 911, 918 (9th Cir. 1996) (“Liability  
10 for improper custom may not be predicated on isolated or sporadic incidents; it  
11 must be founded upon practices of sufficient duration, frequency and consistency  
12 that the conduct has become a traditional method of carrying out policy.”);  
13 *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1443-44 (9th Cir. 1989)  
14 (“Consistent with the commonly understood meaning of custom, proof of random  
15 acts or isolated events are insufficient to establish custom.”), *overruled on other*  
16 *grounds, Bull v. City & County of San Francisco*, 595 F.3d 964, 981 (9th Cir. 2010)  
17 (en banc). Plaintiff’s Complaint fails to set forth any factual allegations concerning  
18 any practice or custom of the County that he alleges was a “traditional method of  
19 carrying out policy” that caused the alleged constitutional violations.

20 Accordingly, the Court finds that plaintiff’s Complaint fails to set forth  
21 factual allegations sufficient to allow the Court to draw a reasonable inference that  
22 the County is liable for any alleged constitutional violation. *See, e.g., Iqbal*, 556  
23 U.S. at 678.

24  
25 **B. Rule 8 and failure to state a claim against defendant Jones**

26 Plaintiff’s Complaint violates Rule 8 and fails to state a plausible claim  
27 against defendant Jones. Plaintiff sets forth extensive factual allegations  
28 concerning his period of probation supervision by defendant Jones, and he also

1 alleges one ten-day incarceration at the Los Angeles County Jail. (ECF No. 1 at 2-  
2 19.) In his First Claim, plaintiff incorporates all of the 92 preceding paragraphs in  
3 the Complaint. (*Id.* at 20.) In each of the following three claims, however, plaintiff  
4 incorporates only his first 40 paragraphs of allegations. (*Id.* at 20-21.) Plaintiff's  
5 Fourth Claim purports to pertain to plaintiff's brief period of incarceration (*see id.*  
6 at paragraphs 77-78), but no factual allegations pertaining to any incarceration  
7 subsequent to his release from California state prison on April 16, 2015, are set  
8 forth in these first 40 paragraphs (*id.* at 2-9). Moreover, plaintiff purports to raise  
9 his Fourth Claim under the Eighth Amendment for the "unjust" treatment he  
10 received while "in the custody of defendants" (*id.* at 21), but the Complaint does  
11 not name any defendants who appear to have had any responsibility for the  
12 treatment that plaintiff experienced while he was held in the Los Angeles County  
13 Jail for ten days. To the extent that plaintiff is purporting to raise a claim under the  
14 Eighth Amendment arising from the conditions of his incarceration in the  
15 Los Angeles County Jail in November 2015, plaintiff should name a defendant that  
16 he alleges was responsible for those conditions in a First Amended Complaint, and  
17 he should set forth factual allegations concerning the allegedly unconstitutional  
18 treatment that he experienced during this period of incarceration.

19 In addition, in plaintiff's Second Claim, plaintiff purports to be raising a  
20 substantive due process claim arising from his alleged incarceration after invoking  
21 his Fifth Amendment rights. (*Id.* at 20.) However, plaintiff's First Claim raises this  
22 same claim under the Fifth Amendment's privilege against coerced confessions.  
23 Plaintiff's claim that defendant Jones deprived him of his privilege against self-  
24 incrimination is properly analyzed under this provision of the Fifth Amendment and  
25 not under a generalized "substantive due process" theory. *See Graham v. Connor*,  
26 490 U.S. 386, 395 (1989) (where a constitutional provision "provides an explicit  
27 textual source of constitutional protection against this sort of physically intrusive  
28 governmental conduct, that Amendment, not the more generalized notion of

1 ‘substantive due process,’ must be the guide for analyzing these claims”); *see also*  
2 *Hall v. City of Los Angeles*, 697 F.3d 1059, 1068 (9th Cir. 2012) (the Fifth  
3 Amendment’s explicit provision “that no person ‘shall be compelled in any  
4 criminal case to be a witness against himself”” governs such a claim rather than  
5 “the more generalized notion of substantive due process”).

6 Further, plaintiff’s Third Claim alleges that he was “incarcerated without a  
7 probable cause hearing” and without being allowed to “face his accusers,” but  
8 plaintiff’s Complaint does not set forth any facts pertaining to any procedures  
9 connected to his incarceration in November 2015. Plaintiff alleges that defendant  
10 Jones said to him that “she was placing him ‘under arrest,’” but plaintiff then  
11 appears to have been placed into the custody of unnamed Los Angeles County  
12 sheriff deputies. (ECF No. 1 at 16-17.) Accordingly, the Complaint fails to set  
13 forth any factual allegations against any named defendant giving rise to a plausible  
14 claim arising from the procedures plaintiff was subjected to in connection with his  
15 November 2015 incarceration.

16 Regarding plaintiff’s First Claim pursuant to the Fifth Amendment, it appears  
17 that defendant Jones, as a probation officer, is entitled to absolute immunity for  
18 claims for damages arising from the imposition of allegedly unconstitutional  
19 probation conditions. *See Swift v. California*, 384 F.3d 1184, 1189 (9th Cir. 2004).  
20 The imposition of conditions of probation or parole is a “quasi-judicial” function  
21 for which probation or parole officials are entitled to absolute immunity. *Id.* at  
22 1188-89. It is the nature of the function performed, not the role or identity of the  
23 actor that determines the scope of absolute immunity. *See, e.g., Engebretson v.*  
24 *Mahoney*, 724 F.3d 1034, 1039 (9th Cir. 2013) (“the Supreme Court has  
25 emphasized this functional approach for determining when public officials may  
26 claim absolute immunity under § 1983”). The Ninth Circuit has held that, where a  
27 specific probation condition was imposed as the result of “particularized and  
28 discretionary decisions by parole officers” as authorized by state law, the officers

1 are entitled to absolute immunity from claims for damages. *See, e.g., Thornton v.*  
2 *Brown*, 757 F.3d 834, 839-40 (9th Cir. 2013); *Frantom v. White*, 627 Fed. Appx.  
3 613, 614 (9th Cir. Dec. 16, 2015) (“defendants were entitled to absolute immunity  
4 for imposing [GPS] monitoring as a condition of [plaintiff’s] probation pursuant to  
5 their discretionary authority” under California law) (now citable for its persuasive  
6 value per Ninth Circuit Rule 36-3); *see also France v. Brown*, 2017 U.S. Dist.  
7 LEXIS 20183, at \*5 (S.D. Cal. Feb. 13, 2017). However, to the extent that plaintiff  
8 may be purporting to claim that defendant Jones enforced or implemented the  
9 probation conditions in an “unconstitutionally arbitrary or discriminatory manner,”  
10 plaintiff may be able to state a claim. *See Thornton*, 757 F.3d at 840.

11 Plaintiff’s Complaint fails to set forth a minimum factual or legal basis for  
12 each claim that is sufficient to give defendant Jones fair notice of what plaintiff’s  
13 claims are and the grounds upon which they rest. To the extent that plaintiff  
14 intends to raise any federal civil rights claims against defendant Jones, plaintiff  
15 should set forth a short and plain statement of each claim showing that Jones took a  
16 specific action, participated in another’s action, or omitted to perform an action that  
17 caused each alleged constitutional deprivation. In order to state a federal civil  
18 rights claim against a particular defendant, plaintiff must allege that a specific  
19 defendant, while acting under color of state law, deprived him of a right guaranteed  
20 under the Constitution or a federal statute. *See West v. Atkins*, 487 U.S. 42, 48  
21 (1988). “A person deprives another ‘of a constitutional right, within the meaning of  
22 section 1983, if he does an affirmative act, participates in another’s affirmative acts,  
23 or omits to perform an act which he is legally required to do that *causes* the  
24 deprivation of which [the plaintiffs complains].” *Leer v. Murphy*, 844 F.2d 628,  
25 633 (9th Cir. 1988) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)  
26 (emphasis and alteration in original)). In order to state a federal civil rights claim  
27 against a defendant, plaintiff must meet the minimal requirement of Rule 8 that a  
28 pleading set forth sufficient factual allegations to allow each defendant to discern

1 what he or she is being sued for. *See McHenry*, 84 F.3d at 1177; *see also Twombly*,  
2 550 U.S. at 555 (“[f]actual allegations must be enough to raise a right to relief  
3 above the speculative level”). The Court remains mindful that, because plaintiff is  
4 appearing *pro se*, the Court must construe the allegations of the Complaint liberally  
5 and must afford plaintiff the benefit of any doubt. That said, the Supreme Court  
6 has made clear that the Court has “no obligation to act as counsel or paralegal to  
7 *pro se* litigants.” *Pliler v. Ford*, 542 U.S. 225, 231 (2004). In addition, the  
8 Supreme Court has held that, while a plaintiff need not plead the legal basis for a  
9 claim, the plaintiff must allege “simply, concisely, and directly events” that are  
10 sufficient to inform the defendants of the “factual basis” of each claim. *Johnson*,  
11 135 S. Ct. at 347. Here, the Complaint does not set a simple and direct statement of  
12 the factual or legal basis of each claim against defendant Jones.

13 Accordingly, the Court finds that plaintiff’s Complaint violates Rule 8  
14 because it fails to set forth a simple, concise, and direct statement of the factual and  
15 legal basis of each of plaintiff’s claims.

16 \*\*\*\*\*

17 **If plaintiff still desires to pursue this action, he is ORDERED to file a**  
18 **First Amended Complaint no later than thirty (30) days after the date of this**  
19 **Order, remedying the pleading deficiencies discussed above.** The First  
20 Amended Complaint should bear the docket number assigned in this case; be  
21 labeled “First Amended Complaint”; and be complete in and of itself without  
22 reference to the original Complaint, or any other pleading, attachment, or  
23 document.

24 The clerk is directed to send plaintiff a blank Central District civil rights  
25 complaint form, which plaintiff is encouraged to utilize. Plaintiff is admonished  
26 that he must sign and date the civil rights complaint form, and he must use the  
27 space provided in the form to set forth all of the claims that he wishes to assert in a  
28 First Amended Complaint.

1 In addition, if plaintiff no longer wishes to pursue this action, he may request  
2 a voluntary dismissal of the action pursuant to Federal Rule of Civil Procedure  
3 41(a). The clerk also is directed to attach a Notice of Dismissal form for plaintiff's  
4 convenience.

5 **Plaintiff is further admonished that, if he fails to timely file a First**  
6 **Amended Complaint, or fails to remedy the deficiencies of this pleading as**  
7 **discussed herein, the Court will recommend that the action be dismissed with**  
8 **prejudice on the grounds set forth above and for failure to diligently**  
9 **prosecute.**

10 Further, plaintiff is advised that on Mondays, Wednesdays, and Fridays in the  
11 United States Courthouse at 312 N. Spring Street, Room G-19, in Los Angeles,  
12 there is a *pro se* clinic that offers information and guidance to individuals who are  
13 representing themselves in federal civil actions. Plaintiff can obtain more  
14 information about the clinic by calling (213) 385-2977, Ext. 270, or by visiting the  
15 clinic website at <http://prose.cacd.uscourts.gov>.

16 **IT IS SO ORDERED.**

17  
18 DATED: December 4, 2017

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21 ALEXANDER F. MacKINNON  
22 UNITED STATES MAGISTRATE JUDGE  
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