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CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ANTHONY VASQUEZ,

Plaintiff,

vs.

JESSE RUBALCAVA et al.,

Defendants.

Case No. SACV 11-1968-DSF (JPR)

ORDER DISMISSING FIRST AMENDED COMPLAINT WITH LEAVE TO AMEND

Plaintiff filed this pro se civil rights action on December 30, 2011. He subsequently was granted leave to proceed in forma pauperis. On January 20, 2012, the Complaint was dismissed with leave to amend, and on February 17, 2012, Plaintiff filed a First Amended Complaint.

Plaintiff's claims purport to arise out of the events surrounding his arrest in November 2008, his subsequent detention, and his April 2009 trial for first-degree burglary and attempted burglary. The FAC names as Defendants the arresting Los Angeles police officers, Jesse Rubalcava and B. Sforzini, in both their individual and official capacities; the Los Angeles Police Department ("LAPD"); and David Neville Haynes, a civilian

witness who called the police on Plaintiff and testified against him at trial.

After screening the FAC in accordance with 28 U.S.C. § 1915(e)(2) prior to ordering service, the Court finds that its allegations generally fail to state a federal civil rights claim upon which relief might be granted, in part because they appear to be time barred. Because the deficiencies of the FAC might be capable of being cured by amendment, the FAC is dismissed with leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc) (holding that pro se litigant must be given leave to amend complaint unless it is absolutely clear deficiencies cannot be cured).

ALLEGATIONS OF THE FAC

Plaintiff alleges that on November 23, 2008, he was waiting near 1836 Laurel Canyon Road in Los Angeles to meet a friend when he stopped to purchase items at a garage sale. (FAC ¶ 8.) While carrying the items he had purchased to his van, Plaintiff was stopped on the street by Defendant Haynes, who accused him of stealing. (FAC ¶¶ 9-10.) Haynes threatened Plaintiff, and to get away, Plaintiff climbed a wall into the yard of a nearby house to find help. (FAC ¶ 10.) Plaintiff fell from the wall, hurt himself, and was disoriented, and he crawled to the back sliding door of the house to call for help. (FAC ¶¶ 11-12.) Plaintiff was spotted by a police helicopter and was then arrested by Defendants Sforzini and Rubalcava. (FAC ¶¶ 12-13.) Plaintiff asked Defendants Sforzini and Rubalcava for medical assistance, but they refused. (FAC ¶¶ 13-14.) Defendants Sforzini and Rubalcava arrested Plaintiff for breaking and

entering, and Defendant Sforzini told Defendant Rubalcava, "I will [show] you how to write [the police report] so it flies." (FAC ¶ 14.)

Plaintiff was processed at the LAPD's Hollywood station, where he again asked for medical assistance and was refused. (FAC ¶ 15.) The officers at the station threatened to put Plaintiff "in isolation" if he continued to ask for medical help. (Id.)

Defendant Sforzini's police report stated that a witness (Defendant Haynes) observed Plaintiff walk alongside a house at 1836 Laurel Canyon that "appeared dark with nobody home" and peer into the windows, and then Plaintiff entered the backyard. (FAC ¶ 16.) The police report "also stated that the suspect['s] arm was inside the residence when [the police] entered the backyard" and "there were no injuries." (Id.)

Plaintiff's case went to trial on April 16, 2009. (FAC ¶ 18.) At trial, Defendant Haynes testified that he saw Plaintiff "crawling up the driveway" and he "seem[ed] to be intoxicated or injured." (FAC ¶ 19.) "He also stated that the suspect was trying to break into the place." (Id.) Defendant Rubalcava testified at trial that when found Plaintiff "was facing the house," but after being impeached with his preliminary-hearing testimony he testified instead that Plaintiff "was facing away from the house." (Id.) Defendant Rubalcava also testified that Plaintiff "appeared to be injured" and asked for medical attention that was not provided. (Id.) Plaintiff testified that he suffered the following injuries: "headaches lasting about 3 weeks, sensitivity to light, tooth being broken

at the base of the gumline, [loss] of balance and ringing in the ears." (Id.)

On April 21, 2009, after just over two hours of deliberation, the jury found Plaintiff not guilty of first-degree burglary or attempted burglary. (FAC ¶ 20.) Plaintiff filed an administrative claim "against the City of Los Angeles" on December 17, 2010, which was denied on February 9, 2011. (FAC ¶ 21.)

Plaintiff brings the following causes of action against Defendants Rubalcava, Sforzini, and the LAPD under 42 U.S.C. § 1983: (1) "Deprivation of Constitutional Rights Against False Imprisonment and False Arrest," in violation of the Fifth and Fourteenth amendments, and (2) "Deprivation of Constitutional Rights Against Cruel and Unusual Punishment in denial of Medical Attention," in violation of the Eighth and Fourteenth amendments.

Plaintiff brings the following causes of action against the above three Defendants as well as Defendant Haynes: (1) "Deprivation of Constitutional Rights Against Malicious Prosecution," in violation of the Fourth, Fifth, and Fourteenth amendments; (2) "Deprivation of Constitutional Rights Against Conspiracy," in violation of the Fourth and Fourteenth amendments and 42 U.S.C. § 1985; and (3) "Deprivation of Constitutional Rights Against Defamation [of] Character in regards to Slander and Libel."

Plaintiff requests the following relief: "Compensatory Damage[s], including general and special damages, of an unspecified amount," "Punitive Damages to be awarded along with Actual Damages to be determined at trial," and "Any further

relief which the court may deem appropriate and proper." (FAC ¶¶ 47-49.)

STANDARD OF REVIEW

The Court's screening of a complaint under 28 U.S.C. § 1915(e)(2) is governed by the following standards. A complaint may be dismissed as a matter of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal theory. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff must allege a factual and legal basis for each claim sufficient to give each defendant fair notice of what the plaintiff's claims are and the grounds upon which they rest. See, e.g., Brazil v. U.S. Dep't of Navy, 66 F.3d 193, 199 (9th Cir. 1995); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991).

In determining whether a complaint states a claim on which relief may be granted, allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. See Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). Moreover, when a plaintiff is appearing pro se, a court must construe the allegations of a complaint liberally and afford the plaintiff the benefit of any doubt. See Karim-Panahi v. L.A. Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). The "liberal pleading standard," however, "applies only to a plaintiff's factual allegations." Neitzke v. Williams, 490 U.S. 319, 330 n.9, 109 S. Ct. 1827, 1834 n.9, 104 L. Ed. 2d 338 (1989). "[A] liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled." Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir.

1997). Further,

> a plaintiff's obligation to provide the "grounds" of his "entitlement to relief" requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.

See Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007) (internal citations omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (to avoid dismissal for failure to state claim, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' [citation omitted] A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.").

DISCUSSION

A. Plaintiff's claims appear to be barred by the applicable statute of limitations

Federal civil rights claims pursuant to 42 U.S.C. § 1983 are subject to the forum state's statute of limitations applicable to personal injury claims. Wilson v. Garcia, 471 U.S. 261, 279-80, 105 S. Ct. 1938, 1949, 85 L. Ed. 2d 254 (1985); Owens v. Okure, 488 U.S. 235, 249-50, 109 S. Ct. 573, 581-82, 102 L. Ed. 2d 594 (1989). Federal law, however, determines when a claim accrues and when the applicable limitations period begins to run. Bagley v. CMC Real Estate Corp., 923 F.2d 758, 760 (9th Cir. 1991). A

cause of action accrues under federal law as soon as a potential claimant either is aware or should be aware of the existence and source of his injury. Lee v. United States, 809 F.2d 1406, 1410 (9th Cir. 1987). Here, Plaintiff claims the alleged constitutional deprivations and injuries took place when he was arrested in November 2008 and when he went to trial in April 2009. He was aware of, or should have been aware of, his injuries and the alleged constitutional deprivations at the time those incidents occurred. Thus, Plaintiff's claims accrued in November 2008 and April 2009, and the statute of limitations began running on those dates.

The California statute of limitations for personal injury actions is two years. Cal. Civ. Proc. Code § 335.1. The limitations period may be tolled while a plaintiff is incarcerated, up to a maximum of two additional years. See Cal. Civ. Proc. Code § 352.1.[1] According to the allegations of the FAC, Plaintiff was incarcerated for a period of approximately five months, from November 23, 2008, to April 16, 2009. Thus, at least with regard to any claims stemming from his arrest in November 2008, Plaintiff would appear to be eligible for a five-month suspension of the statute pursuant to California Code of Civil Procedure section 352.1. Thus, the statute appears to have expired, at the latest, in April 2011 for claims arising from

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[1]Section 352.1 provides, in part: "(a) If a person entitled to bring an action, mentioned in Chapter 3 (commencing with Section 335), is, at the time the cause of action accrued, imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life, the time of that disability is not a part of the time limited for the commencement of the action, not to exceed two years."

Plaintiff's arrest and that same month for claims arising from Plaintiff's prosecution. Plaintiff, however, did not file the instant action until December 30, 2011, almost eight months after the statute of limitations appears to have expired for all of his claims, even with the additional statutory tolling.[2]

The statute of limitations is not jurisdictional; it must be raised as an affirmative defense. See Krug v. Imbordino, 896 F.2d 395, 396 (9th Cir. 1990). Thus, the Court will not at this time dismiss the FAC on that basis. It appears, however, that litigation of Plaintiff's action would likely be fruitless because Defendants would successfully move to dismiss on the ground that the action is time barred. Accordingly, the Court is attaching to this Order a form Notice of Voluntary Dismissal; in case Plaintiff decides not to pursue this action, he may fill out and file that form with the Court.

B. Plaintiff's claims against Defendant Haynes are barred by the doctrine of witness immunity and because Haynes did not act "under color of law"

Plaintiff alleges three causes of action against Defendant Haynes. In his third cause of action, for malicious prosecution, Plaintiff alleges that Haynes "conspired maliciously with the officers to fabricate the police report for the purpose of conviction of a crime that never was committed or in the act of

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[2]Plaintiff asserts that he had an administrative claim pending against "the City of Los Angeles" (which is not a defendant in this action) for approximately two months, from December 17, 2010, to February 9, 2011. (FAC ¶ 21.) Even if the limitations period were tolled for those two months, Plaintiff's action would still be time barred by more than five months.

committing." (FAC ¶ 35.) In his fourth cause of action, for "Deprivation of Constitutional Rights Against Conspiracy," Plaintiff alleges that Haynes "never saw [Plaintiff] riding any bicycle or climbing any wall at the trial as is stated in the report the Officers filed." (FAC ¶ 40.) He also realleges that Haynes "conspired maliciously with the officers" to prosecute Plaintiff for a crime he did not commit. (Id.) In his fifth cause of action, for "Defamation [of] Character with regards to Slander and Libel [in violation of] the Plaintiff's civil rights granted to him under the 5th and 14th amendment of the Constitution," Plaintiff alleges that Defendant Haynes defamed him by calling the police on Plaintiff and by testifying against Plaintiff at trial. (FAC ¶ 45.)

Haynes was both a complaining witness, responsible for helping to initiate the prosecution of Plaintiff, and a testifying witness. As for the latter, even accepting as true the allegation that Haynes's testimony was knowingly false, Plaintiff's claims against him as they relate to his trial testimony are absolutely barred by the doctrine of witness immunity. See Burns v. Reed, 500 U.S. 478, 489-92, 111 S. Ct. 1934, 1941-42, 114 L. Ed. 2d 547 (1991) (witnesses absolutely immune from damages for making false or defamatory statements in judicial proceedings; immunity extends to any hearing before a tribunal that performs a judicial function); Briscoe v. LaHue, 460 U.S. 325, 345-46, 103 S. Ct. 1108, 1121, 75 L. Ed. 2d 96 (1983) (Congress, in enacting § 1983, did not abrogate common-law absolute immunity afforded to witnesses for alleged false testimony in a judicial proceeding); Paine v. City of Lompoc, 965

F.3d 975, 981 (9th Cir. 2001) ("Witnesses, including police witnesses, are immune from liability for their testimony in earlier proceedings even if they committed perjury."); see also Franklin v. Terr, 201 F.3d 1098, 1101-02 (9th Cir. 2000) (holding that absolute witness immunity applies to conspiracy to provide perjured testimony).

In certain limited circumstances, complaining witnesses - those who help initiate prosecution - are not entitled to absolute immunity. A plaintiff seeking to raise such a claim must allege facts sufficient to show that the witness acted maliciously in "encouraging" the prosecution as opposed to "simply report[ing] a crime." Franklin v. Fox, No. C 97-2443 CRB, 2001 WL 114438, at *3 (N.D. Cal. Jan. 22, 2001). If the complaining witness is a private party, the Plaintiff must also sufficiently allege that the Defendant conspired with state actors. See United Steel Workers of Am. v. Phelps Dodge Corp., 865 F.2d 1539, 1540 (9th Cir. 1989) (en banc). A naked assertion that a conspiracy existed, without more, is insufficient to state a claim. See Karim-Panahi, 839 F.2d at 626 ("A mere allegation of conspiracy without factual specificity is insufficient"); Olsen v. Idaho St. Bd. of Med., 363 F.3d 916, 929 (9th Cir. 2004) ("To state a claim for conspiracy to violate constitutional rights, the plaintiff must state specific facts to support the existence of the claimed conspiracy." (internal quotation marks omitted)).

While Plaintiff alleges Haynes "conspired maliciously with the officers" to prosecute him, he does not allege any facts that would support the existence of such a conspiracy. Indeed,

Plaintiff's bare allegation of a conspiracy is belied by the FAC itself, wherein Plaintiff states that Haynes testified at trial that he "never saw [Plaintiff] riding any bicycle or climbing any wall . . . as is stated in the report the Officers filed." (FAC ¶ 25.) If Haynes had conspired with the officers in a scheme to falsely arrest and maliciously prosecute Plaintiff, he would not have testified inconsistently with the officers at trial. Thus, Plaintiff's conspiracy allegations are not plausible. See Weisbuch v. Cnty. of Los Angeles, 119 F.3d 778, 783 n.1 (9th Cir. 1997) ("[A] plaintiff may plead [him]self out of court" if he "plead[s] facts which establish that he cannot prevail on his [constitutional] claim."). Setting aside pure legal conclusions and focusing instead on the facts alleged in the FAC, Plaintiff has not alleged that Haynes did anything other than report a crime. These allegations are insufficient to state a claim against Defendant Haynes under § 1983, the framework of all three claims against Haynes. See Goehring v. Wright, 858 F. Supp. 989, 998 (N.D. Cal. 1994) (holding that private citizens who complained to local authorities about neighbor's alleged activities, giving rise to neighbor's arrest and prosecution, were not "state actors" for purposes of § 1983).

For the reasons stated above, Plaintiff's claims against Defendant Haynes are dismissed. Plaintiff is again cautioned that to the extent Defendant Haynes is absolutely immune from suit under the doctrine of witness immunity and is a private citizen not acting under "color of law," any attempt to reallege § 1983 claims against Defendant Haynes would likely be futile. See Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir.

1996).

C. Plaintiff's claims against the LAPD and Officers Rubalcava and Sforzini in their official capacity are insufficient

Plaintiff's FAC alleges claims against Defendants Rubalcava and Sforzini in both their individual and official capacities. He has also sued a government entity, the LAPD. A local government entity may be sued under § 1983 only "when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." See Monell v. N.Y.C. Dep't of Soc. Servs., 436 U.S. 658, 694, 98 S. Ct. 2018, 2037-38, 56 L. Ed. 2d 611 (1978). Plaintiff may not sue the LAPD on a theory of respondeat superior, which is not a theory of liability cognizable under 42 U.S.C. § 1983. See Iqbal, 129 S. Ct. at 1948; Polk Cnty. v. Dodson, 454 U.S. 312, 325, 102 S. Ct. 445, 453, 70 L. Ed. 2d 509 (1981). An "official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 166, 105 S. Ct. 3099, 3105, 87 L. Ed. 2d 114 (1985); see also Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir. 1991). Such a suit "is not a suit against the official personally, for the real party in interest is the entity." Graham, 473 U.S. at 166.

The LAPD and its officers in their official capacities may be liable for the acts alleged in the FAC only if "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by that body's officers," or the alleged

constitutional deprivation was "visited pursuant to a governmental 'custom' even though such a custom has not received formal approval through the body's official decision-making channels." Monell, 436 U.S. at 690-91; see also Redman v. Cnty. of San Diego, 942 F.2d 1435, 1443-44 (9th Cir. 1991). Plaintiff must show that "there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation." City of Canton v. Harris, 489 U.S. 378, 385, 109 S. Ct. 1197, 1203, 103 L. Ed. 2d 412 (1989).

Here, Plaintiff has failed to identify any existing policy, custom, or practice established and utilized by the municipal Defendant the execution of which inflicted the various alleged deprivations of Plaintiff's constitutional rights. Indeed, in his third claim alleging cruel and unusual punishment, Plaintiff alleges that the officers acted in violation of the LAPD's policy with respect to "medical treatment of unbooked arrestees," which states that "[a]n officer having custody of an unbooked arrestee who is, or complains of being, ill, injured or in need of medication shall: Cause the arrestee to be examined at a Department Jail Dispensary, a Los Angeles County Medical Center, or a Department contract hospital." (FAC ¶ 30.) Plaintiff's fifth claim provides only conclusory allegations of a municipal custom: the LAPD "has a history of false reporting which is well documented" and "continued today," and that "[i]n doing so, the [LAPD] has created [its] own acceptance of this violation of civil rights by making it customary." (FAC ¶ 45.) These types of conclusory allegations are insufficient to state a claim for municipal liability. See Iqbal, 129 S. Ct. at 1949-50; see also

Young v. City of Visalia, 687 F. Supp. 2d 1141, 1149 (E.D. Cal. 2009) ("[I]n light of Iqbal, it would seem that the prior Ninth Circuit pleading standard for Monell claims (i.e., 'bare allegations') is no longer viable."); Haley v. Gipson, No. CV 11-787-AG(E), 2011 WL 838919 (C.D. Cal. Feb. 28, 2011) ("Plaintiff has failed to allege facts from which one plausibly could infer the existence of . . . a municipal policy, custom or usage; Plaintiff's conclusory allegations are insufficient."). Thus, Plaintiff's claims against the LAPD and Officers Rubalcava and Sforzini in their official capacity must be dismissed.

D. Plaintiff's § 1985 claim fails to allege a conspiracy based on bias against a protected class

Plaintiff's fourth cause of action alleges that Defendants Rubalcava, Sforzini, Haynes, and the LAPD engaged in a conspiracy to "deprive[] the Plaintiff to the right of equal protection" by filing a false police report and giving false testimony at trial, in violation of 42 U.S.C. § 1985. (FAC ¶ 40.) Section 1985 prevents any "two or more persons in any State or Territory" from engaging in a "conspiracy to interfere with civil rights." Section 1985(3)[3] prohibits conspiracies to deprive "any person or persons" of equal protection under the laws, equal privileges and immunities under the laws, or the right to vote. Any party

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[3]Section 1985 contains three subsections. Section 1985(1) prohibits conspiracies to prevent a state officer from performing his or her official duties. Section 1985(2) prohibits conspiracies to obstruct justice by intimidating a party, witness, or juror in any court proceeding. Section 1985(3) prohibits conspiracies to deprive any person of equal protection of the laws. Plaintiff does not specify under which subsection he intends to bring his claims; however, based on the facts alleged in the FAC, it appears that § 1985(3) is the only applicable subsection.

injured as a result of a violation of § 1985 "may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators." 42 U.S.C. § 1985(3).

To state a claim under § 1985(3), a plaintiff must allege "(1) that some racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay] behind the conspirators' action, . . . and (2) that the conspiracy aimed at interfering with rights that are protected against private, as well as official, encroachment." Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 267-68, 113 S. Ct. 753, 758, 122 L. Ed. 2d 34 (1993) (citations and internal quotation marks omitted). "[T]he plaintiff must state specific facts to support the existence of the claimed conspiracy." Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 929 (9th Cir. 2004) (citation and internal quotations omitted). Plaintiff must allege facts showing that he was intentionally treated differently from others similarly situated and that there was no rational basis for the difference in treatment. See Village of Willowbrook v. Olech, 528 U.S. 562, 564, 120 S. Ct. 1073, 1074, 145 L. Ed. 2d 1060 (2000); Barren v. Harrington, 152 F.3d 1193, 1194-95 (9th Cir. 1998). Conclusory allegations will not suffice. See Iqbal, 129 S. Ct. at 1949; Karim-Panahi, 839 F.2d at 626 (affirming dismissal of § 1985(3) claim containing "legal conclusions but no specification of any facts to support the claim of conspiracy").

Here, Plaintiff does not allege that any "racial, or perhaps otherwise class-based, invidiously discriminatory animus [lay]

behind the conspirators' action." Bray, 506 U.S. at 267-68. Thus, his § 1985 claim must be dismissed.

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If Plaintiff concedes his claims are barred by the applicable statute of limitations, he may voluntarily dismiss this action. The Clerk is directed to provide to Plaintiff, along with this Order, a notice of voluntary dismissal for Plaintiff to fill out and file.

If Plaintiff desires to pursue any of the claims in the FAC, he is ORDERED to file a Second Amended Complaint within 28 days of the service date of this Order, remedying the deficiencies discussed above. The Second Amended Complaint should bear the docket number assigned to this case, be labeled "Second Amended Complaint," and be complete in and of itself without reference to the original Complaint, the FAC, or any other pleading, attachment, or document. To the extent Plaintiff believes his claims are not time-barred, Plaintiff should plead specific facts in the SAC demonstrating how his claims fall within the applicable statute of limitations or why the statute should be tolled. **Plaintiff is admonished that if he fails to timely file a SAC, the Court will recommend that this action be dismissed with prejudice on the grounds set forth above and/or for failure to diligently prosecute.**

DATED: March 7, 2012

JEAN ROSENBLUTH
U.S. MAGISTRATE JUDGE