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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNY D. COOPER, SR.,)	1:10-cv-01040 AWI GSA
Plaintiff,)	FINDINGS AND RECOMMENDATIONS
v.)	REGARDING PLAINTIFF’S COMPLAINT
ROBERT C. SMITH,)	(Document 1)
Defendant.)	

Plaintiff Johnny D. Cooper, Sr. (“Plaintiff”), appearing pro se and proceeding in forma pauperis, filed the instant complaint¹ against Defendant Robert C. Smith on June 10, 2010. Plaintiff asks this Court to review the dismissal of an action filed in the Fresno County Superior Court. (Doc. 1.)

DISCUSSION

A. Screening Standard

Pursuant to Title 28 of the United States Code section 1915(e)(2), the Court must conduct an initial review of the complaint for sufficiency to state a claim. The Court must dismiss a

¹The title of Plaintiff’s pleading actually reads “Petition for Review.”

1 complaint or portion thereof if the Court determines that the action is legally “frivolous or
2 malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from
3 a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). If the Court determines
4 that the complaint fails to state a claim, leave to amend may be granted to the extent that the
5 deficiencies of the complaint can be cured by amendment.

6 A complaint must contain “a short and plain statement of the claim showing that the
7 pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
8 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
9 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citing
10 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff
11 must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
12 face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Twombly*, 550 U.S. at 555). While legal conclusions
13 can provide a framework of a complaint, they must be supported by factual allegations. *Iqbal*,
14 129 S.Ct. at 1950. While factual allegations are accepted as true, legal conclusion are not. *Iqbal*
15 at 1949.

16 In reviewing a complaint under this standard, the Court must accept as true the allegations
17 of the complaint in question, *Hospital Bldg. Co. V. Trustees of Rex Hospital*, 425 U.S. 738, 740
18 (1976), construe the pro se pleadings liberally in the light most favorable to the Plaintiff, *Resnick*
19 *v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor,
20 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

21 A pleading may not simply allege a wrong has been committed and demand relief. The
22 underlying requirement is that a pleading give “fair notice” of the claim being asserted and the
23 “grounds upon which it rests.” *Conley v. Gibson*, 355 U.S. 41, 47-48 (1957); *Yamaguchi v.*
24 *United States Department of Air Force*, 109 F.3d 1475, 1481 (9th Cir. 1997).

1 **B. 1983 Actions**

2 The Civil Rights Act under which this action was filed provides as follows:

3 Every person who, under color of [state law] . . . subjects, or causes to be
4 subjected, any citizen of the United States . . . to the deprivation of any rights,
5 privileges, or immunities secured by the Constitution . . . shall be liable to the
6 party injured in an action at law, suit in equity, or other proper proceeding for
7 redress.

8 42 U.S.C. § 1983. Thus, to state a claim under Title 42 of the United States Code section 1983,²
9 a plaintiff must allege that (1) the defendant acted under color of state law, and (2) the defendant
10 deprived him of rights secured by the Constitution or federal law. *Long v. County of Los*
11 *Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006).

12 Moreover, section 1983 requires that there be an actual connection or link between the
13 actions of defendant and the deprivation allegedly suffered. *See Monell v. Department of Social*
14 *Services*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362 (1976). The Ninth Circuit Court of
15 Appeals has held that “a person ‘subjects’ another to deprivation of constitutional right, within
16 the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative
17 acts or omits to perform an act which he is legally required to do that causes the deprivation of
18 which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

19 **C. Plaintiff’s Allegations**

20 Plaintiff’s complaint is actually entitled “Petition for Review,” although he does
21 expressly cite to Title 42 of United States Code section 1983 and other federal authorities. The
22 gist of Plaintiff’s complaint, however, is that he believes the Fresno County Superior Court erred
23 by granting Defendant’s demurrer to Plaintiff’s second amended complaint in the state court’s
24 case number 08CECG03699 AMC on May 21, 2010. (*See* Doc. 1 at 2 & Att. 7 [Law and Motion
25 Minute Order & Tentative Ruling].) He specifically asks this Court “to review the superior court
26 dismissal decision . . .” (Doc. 1 at 2:22-23.)

27 ²All further statutory references are to Title 42 of the United States Code unless otherwise
28 indicated.

1 (9th Cir. 1998) (holding the *Rooker-Feldman* doctrine is jurisdictional). Thus, “a losing party in
2 state court is barred from seeking what in substance would be appellate review of the state
3 judgment in a United States District Court, based on the losing party’s claim that the state
4 judgment itself violates the loser’s federal rights.” *Johnson v. DeGrandy*, 512 U.S. 997,
5 1005-1006 (1994).

6 The *Rooker-Feldman* doctrine bars this Court’s review of the proceedings involving
7 Plaintiff and Defendant in the Fresno County Superior Court case. *Gottfried*, 142 F.3d at 330.
8 In sum, this Court does not have subject matter jurisdiction to review state court judgments such
9 as the one Plaintiff expressly asks this Court to review. For that reasons, this Court will
10 recommend Plaintiff’s complaint be dismissed without leave to amend.

11 **2. Judicial Immunity**

12 To the degree Plaintiff’s complaint can be interpreted to assert a claim against Fresno
13 County Superior Court Judge Adolfo M. Corona (Doc. 1 at 2:12-13 [“Plaintiff finds that the
14 superior court is unwilling to fulfill its constitutional obligations . . .]), Plaintiff is advised that
15 state court judges and prosecutors are immune from liability under section 1983. *See Olsen v.*
16 *Idaho State Bd. of Medicine*, 363 F.3d 916, 922 (9th Cir. 2004) (“Absolute immunity is
17 generally accorded to judges and prosecutors functioning in their official capacities”); *Ashelman*
18 *v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (holding that judges and prosecutors are immune
19 from liability for damages under section 1983). Thus, Judge Corona is entitled to immunity in
20 any section 1983 action.

21 **FINDINGS AND RECOMMENDATIONS**

22 For the foregoing reasons, the Court HEREBY RECOMMENDS that this action be
23 DISMISSED WITHOUT LEAVE TO AMEND.

24 These findings and recommendations will be submitted to the Honorable Anthony W.
25 Ishii pursuant to the provisions of section 636(b)(1). Within thirty (30) days after being served
26 with these findings and recommendations, the parties may file written objections with the Court.
27

1 The document should be captioned "Objections to Magistrate Judge's Findings and
2 Recommendations." The parties are advised that failure to file objections within the specified
3 time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153
4 (9th Cir. 1991).

5
6 IT IS SO ORDERED.

7 **Dated: November 12, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

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