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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

STEVEN MIHALOVIC,)	1:10-cv-01061 AWI GSA
Plaintiff,)	ORDER DISMISSING PLAINTIFF'S
v.)	COMPLAINT WITH LEAVE TO AMEND
MATTHEW WEISS, et al.,)	(Document 1)
Defendants.)	

Plaintiff Steven Mihalovic (“Plaintiff”), appearing pro se and proceeding in forma pauperis, filed the instant complaint alleging damages for personal injuries against Los Banos Police Officer Matthew Weiss, Deputy District Attorney Travis M. Colby and District Attorney Larry D. Morse, II, in Merced County (“Defendants”) after he was held for eight months in jail “without evidence.” (Doc. 1 at 3.) Plaintiff seeks compensation for loss of property and wages, as well as punitive damages. (Doc. 1 at 3.)

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

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 due process . . . , a plaintiff is ordinarily required to prove that a challenged government action
2 was clearly arbitrary and unreasonable, having no substantial relation to the public health, safety,
3 morals, or general welfare. Where a particular amendment provides an explicit textual source of
4 constitutional protection against a particular sort of government behavior, that Amendment, not
5 the more generalized notion of substantive due process, must be the guide for analyzing a
6 plaintiff’s claims.” *Patel v. Penman*, 103 F.3d 868, 874 (9th Cir. 1996) (internal citations &
7 quotations omitted), *cert. denied*, 117 S. Ct. 1845 (1997); *County of Sacramento v. Lewis*, 523
8 U.S. 833, 842 (1998).

9 If, on the other hand, Plaintiff intended to assert a claim of false imprisonment, he is
10 advised that, under California law, false imprisonment is the “unlawful violation of the personal
11 liberty of another.” *Martinez v. City of Los Angeles*, 141 F.3d 1373, 1379 (9th Cir. 1998)
12 (quoting *Asgari v. City of Los Angeles*, 15 Cal.4th 744, 757 (1997)). “The elements of a tortious
13 claim of false imprisonment are: (1) the nonconsensual, intentional confinement of a person, (2)
14 without lawful privilege, and (3) for an appreciable period of time, however brief.” *Lyons v. Fire*
15 *Ins. Exchange*, 161 Cal.App.4th 880, 888 (2008) (internal citations omitted).

16 Plaintiff will be permitted an opportunity to amend his complaint to assert a claim against
17 Officer Weiss in accordance with the foregoing.

18 **3. District Attorney Defendants**

19 Plaintiff claims that Merced County District Attorney Larry D. Morse and Deputy District
20 Attorney Travis M. Colby “held [him] for eight months vindictively without evidence” before
21 eventually dismissing the case against him in May 2009. (Doc. 1 at 3.)

22 Plaintiff is advised that state court judges and prosecutors are immune from liability
23 under section 1983. *See Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 922 (9th Cir. 2004)
24 (“Absolute immunity is generally accorded to judges and prosecutors functioning in their official
25 capacities”); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (holding that judges and
26 prosecutors are immune from liability for damages under section 1983). Thus, Defendants
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1 Morse and Colby, as Merced County prosecutors, are absolutely immune from liability for
2 damages. Thus, Plaintiff may not state a claim against Defendants Morse or Colby in his
3 amended complaint.

4 **D. *Rooker-Feldman Doctrine***

5 To the extent that Plaintiff’s complaint can be interpreted as a request that the Court
6 review the state court proceeding, this Court lacks jurisdiction to do so. Federal courts lack
7 jurisdiction to review or modify state court judgments under the *Rooker-Feldman* doctrine. *See*
8 *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 44 S.Ct. 149 (1923); *District of Columbia*
9 *Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S.Ct. 1303 (1983). The *Rooker-Feldman*
10 doctrine is based on section 1257 which grants the United States Supreme Court jurisdiction to
11 review decisions of the highest state courts for compliance with the federal Constitution. *See*
12 *Rooker*, 263 U.S. 413, 44 S.Ct. 149; *Feldman*, 460 U.S. at 482, 103 S.Ct. 1303. The doctrine
13 provides that “lower federal courts do not have jurisdiction to review a case litigated and decided
14 in state court; only the United States Supreme Court has jurisdiction to correct state court
15 judgments.” *Gottfried v. Medical Planning Services*, 142 F.3d 326, 330 (6th Cir. 1998). “This is
16 equally true in constitutional cases brought under § 1983, since federal courts must give ‘full
17 faith and credit’ to the judicial proceedings of state courts.” *Gottfried*, 142 F.3d at 330 (citing §
18 1738).

19 “Federal district courts lack subject matter jurisdiction to review such final adjudications
20 or to exclude constitutional claims that are ‘inextricably intertwined with the state court’s
21 [decision] in a judicial proceeding.’” *Valenti v. Mitchell*, 962 F.2d 288, 296 (3rd Cir. 1992)
22 (quoting *Feldman*, 460 U.S. at 483, n.16). This rule applies to “inextricably intertwined” with
23 final state court decisions, even if such “inextricably intertwined” claims were not raised in state
24 court. *See District of Columbia Court of Appeals v. Feldman*, 460 U.S. at 483-487 & n.16;
25 *Rooker v. Fidelity Trust Co.*, 263 U.S. 413; *Olson Farms, Inc. v. Barbosa*, 134 F.3d 933, 937
26 (9th Cir. 1998) (holding the *Rooker-Feldman* doctrine is jurisdictional). Thus, “a losing party in
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1 state court is barred from seeking what in substance would be appellate review of the state
2 judgment in a United States District Court, based on the losing party’s claim that the state
3 judgment itself violates the loser’s federal rights.” *Johnson v. DeGrandy*, 512 U.S. 997,
4 1005-1006 (1994).

5 In sum, this Court does not have subject matter jurisdiction to review state court
6 proceedings or judgments.

7 **E. Miscellaneous Information**

8 As previously noted, Plaintiff’s complaint is vague and conclusory. More particularly, at
9 page four of his complaint, Plaintiff included a list of roman numerals I through IV, although
10 none of the information provided amounts to claim upon which relief may be granted. At pages
11 four and five, appear the phrases “(Damages: Loss of Reputation),” “Malice - deliberate act” and
12 “Add Punitive Damages and mental stress and anguish - slander, defamation of character.”
13 Merely using the foregoing phrases is insufficient to state a claim upon which relief may be
14 granted. The following information is provided for Plaintiff’s consideration in light of the fact he
15 will be given leave to amend his complaint to cure the deficiencies identified herein.

16 **1. Claim Against Merced County**

17 If Plaintiff intended to assert a claim against Merced County,² he is advised that a local
18 government unit may not be held responsible for the acts of its employees under a respondeat
19 superior theory of liability. *Monell v. Department of Social Services*, 436 U.S. at 691; *Webb v.*
20 *Sloan*, 330 F.3d 1158, 1163-64 (9th Cir. 2003); *Gibson v. County of Washoe*, 290 F.3d 1175,
21 1185 (9th Cir. 2002). Rather, a local government unit may only be held liable if it inflicts the
22 injury complained of. *Gibson*, 290 F.3d at 1185.

23 Generally, a claim against a local government unit for municipal or county liability
24 requires an allegation that “a deliberate policy, custom, or practice . . . was the ‘moving force’

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26 ²In the caption of his complaint, Plaintiff identified Officer Weiss, D.D.A. Colby and
27 D.A. Morse. However, off to the right hand side, Plaintiff wrote in “Merced County ‘All three’,”
28 thus the Court presumes he may have intended to assert a claim or claims against the county.

1 behind the constitutional violation . . . suffered.” *Galen v. County of Los Angeles*, 477 F.3d 652,
2 667 (9th Cir. 2007); *City of Canton, Ohio, v. Harris*, 489 U.S. 378, 385 (1989). Alternatively,
3 and more difficult to prove, municipal liability may be imposed where the local government
4 unit’s omission led to the constitutional violation by its employee. *Gibson*, at 1186. Under this
5 route to municipal liability, the “plaintiff must show that the municipality’s deliberate
6 indifference led to its omission and that the omission caused the employee to commit the
7 constitutional violation.” *Id.* Deliberate indifference requires a showing “that the municipality
8 was on actual or constructive notice that its omissions would likely result in a constitutional
9 violation.” *Id.*

10 If in fact Plaintiff intends to amend his complaint to assert a claim against the County of
11 Merced, he is advised he must allege a claim that comports with the aforementioned legal
12 standard. In order to state a claim for relief under section 1983, Plaintiff must link a named
13 defendant with some affirmative act or omission that demonstrates a violation of his federal
14 rights or link the municipality to the execution of a policy or custom that violated his federal
15 rights.

16 2. Defamation/Slander

17 Defamation alone is not a constitutional violation. *See Paul v. Davis*, 424 U.S. 693, 712,
18 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976) (“[P]etitioners' defamatory publications, however seriously
19 they may have harmed respondent's reputation, did not deprive him of any ‘liberty’ or ‘property’
20 interests protected by the Due Process Clause”); *see e.g., Stump v. Gates*, 777 F.Supp. 808,
21 820-21 (D. Colo. 1991) (allegations of harm to family's reputation, based on published
22 statements by police and coroner of father's death as suicide, stated no more than state tort law
23 claim for defamation or possibly intentional infliction of emotional distress, and failed to assert
24 denial of right secured by Constitution or laws of the United States), *aff'd*, 986 F.2d 1429 (10th
25 Cir. 1993); *Miller v. California*, 355 F.3d 1172 (9th Cir. 2004) (plaintiff whose name was placed
26 on California Child Abuse Central Index failed to show he suffered the loss of a recognizable
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1 property or liberty interest in connection with reputational injury from having name placed on
2 index, as required to satisfy “stigma-plus” test for stating a defamation claim under § 1983).

3 To support a section 1983 claim based on injury to reputation, a plaintiff must allege "that
4 the stigma was accompanied by some additional deprivation of liberty or property . . . protected
5 by the state that directly affects the plaintiff's rights." *Miller v. California*, 355 F.3d 1172, 1178
6 (9th Cir. 2004) (citation omitted).

7 In California, a state law claim of defamation consists of either libel or slander. Cal. Civ.
8 Code, § 44. “Libel is a false and unprivileged publication by writing, printing, picture, effigy, or
9 other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or
10 obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in
11 his occupation.” Cal. Civ. Code, § 45. To state a claim for defamation, Plaintiff must establish
12 “the intentional publication of a statement of fact that is false, unprivileged, and has a natural
13 tendency to injure or which causes special damage.” *Smith v. Maldonado*, 72 Cal.App.4th 637,
14 645, 85 Cal.Rptr.2d 397 (1999). Under California law, the defamatory statement must be
15 specifically identified, and Plaintiff must plead the substance of the statement. *Jacobson v.*
16 *Schwarzenegger*, 357 F.Supp.2d 1198, 1216 (C.D. Cal. 2004); *see also Okun v. Superior Court*,
17 29 Cal.3d 442, 458, 175 Cal.Rptr. 157, 629 P.2d 1369 (1981) (a plaintiff must plead the alleged
18 libelous words). A publication is communication to some third person who understands the
19 defamatory meaning of the statement and its application to the person to whom reference is
20 made. *Smith v. Maldonado*, 72 Cal.App.4th at 645.

21 **3. Claims Pertaining to Emotional Distress**

22 Lastly, Plaintiff is advised that, under California law, the elements of intentional
23 infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the
24 intention of causing, or reckless disregard of the probability of causing, emotional distress; (2)
25 the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate
26 causation of the emotional distress by defendant's outrageous conduct. *Sabow v. United States*,

1 93 F.3d 1445, 1454 (9th Cir. 1996) (citing to *Christensen v. Superior Court*, 54 Cal.3d 868
2 (1991)).

3 Negligent infliction of emotional distress, however, is not an independent tort, but the tort
4 of negligence (*Burgess v. Superior Court*, 2 Cal.4th 1064 (1992)), and “contains the traditional
5 elements of duty, breach of duty, causation and damages.” *Jacoves v. United Merchandising*
6 *Corp.*, 9 Cal.App.4th 88, 107 (1992). To the extent Plaintiff may be attempting to pursue a
7 separate claim for relief for the negligent infliction of emotional distress, he may not do so.

8 **CONCLUSION**

9 For the above reasons, Plaintiff’s complaint is DISMISSED WITH LEAVE TO AMEND.
10 Plaintiff’s first amended complaint is due within thirty (30) days of the date of service of this
11 order. If Plaintiff fails to file a first amended complaint, the Court will recommend that this
12 action be dismissed for failure to follow a court order.

13 Plaintiff is cautioned that an amended complaint supercedes the original complaint, and
14 must be “complete in itself without reference to the prior or superceded pleading.” *See Forsyth*
15 *v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th
16 Cir. 1987); Local Rule 220. Plaintiff is warned that “[a]ll causes of action alleged in an original
17 complaint which are not alleged in an amended complaint are waived.” *King*, 814 F.2d at 567,
18 citing to *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981); *accord Forsyth*, 114
19 F.3d at 1474.

20
21 IT IS SO ORDERED.

22 **Dated: November 2, 2010**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE