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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JULIO CESAR CASTELLANOS,
Plaintiff,
vs.
DARRYL B. FERGUSON, et al.,
Defendants.

Case No. 1:10-cv-02261 LJO JLT (PC)
ORDER DISMISSING THE COMPLAINT
WITH LEAVE TO AMEND
(Doc. 1)

_____ /

Plaintiff is a state prisoner proceeding pro se and *in forma pauperis* with a civil rights action pursuant to 42 U.S.C. § 1983. This proceeding was referred to the undersigned magistrate judge in accordance with 28 U.S.C. § 636(b)(1) and Local Rule 302. Pending before the Court is Plaintiff’s complaint filed December 6, 2010.

I. SCREENING

A. Screening Requirement

The Court is required to review a case in which a prisoner seeks redress from a governmental entity or officer. 28 U.S.C. § 1915A(a). The Court must review the complaint and dismiss any portion thereof that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). If the Court determines the complaint fails to state a claim, leave to amend should be granted to the extent that the deficiencies can be cured by amendment. Lopez v. Smith, 203 F.3d 1122, 1127-28 (9th Cir. 2000).

1 **B. Section 1983**

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 subjected, any
4 citizen of the United States . . . to the deprivation of any rights, privileges, or immunities
5 secured by the Constitution . . . shall be liable to the party injured in an action at law, suit
6 in equity, or other proper proceeding for redress.

6 42 U.S.C. § 1983.

7 To plead a § 1983 violation, the plaintiff must allege facts from which it may be inferred that (1)
8 plaintiff was deprived of a federal right, and (2) the person who deprived plaintiff of that right acted
9 under color of state law. West v. Atkins, 487 U.S. 42, 48 (1988); Collins v. Womancare, 878 F.2d 1145,
10 1147 (9th Cir. 1989). To warrant relief under § 1983, the plaintiff must allege and show that the
11 defendants’ acts or omissions caused the deprivation of the plaintiff’s constitutionally protected rights.
12 Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1993). “A person deprives another of a constitutional right,
13 within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative
14 acts, or omits to perform an act which he is legally required to do that causes the deprivation of which
15 [the plaintiff complains].” Id. There must be an actual causal connection or link between the actions
16 of each defendant and the deprivation alleged to have been suffered by the plaintiff. Monell v. Dept. of
17 Social Services, 436 U.S. 658, 691-92 (1978) (citing Rizzo v. Goode, 423 U.S. 362, 370-71(1976)).

18 **C. Rule 8(a)**

19 Section 1983 complaints are governed by the notice pleading standard in Federal Rule of Civil
20 Procedure 8(a), which provides in relevant part that:

21 A pleading that states a claim for relief must contain:

- 22 (1) a short and plain statement of the grounds for the court’s jurisdiction, unless the court
23 already has jurisdiction and the claim needs no new jurisdictional support;
- 24 (2) a short and plain statement of the claim showing that the pleader is entitled to relief;
25 and
- 26 (3) a demand for the relief sought, which may include relief in the alternative or different
27 types of relief.

27 The Federal Rules of Civil Procedure adopt a flexible pleading policy. Nevertheless, a complaint
28 must “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests[.]” Bell

1 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47
2 (1957)). “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than
3 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]”
4 Twombly, 550 U.S. at 555 (citations and quotations omitted). Rather, the complaint “must contain
5 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
6 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868, 883 (2009) (quoting Twombly, 550 U.S.
7 at 570). Vague and conclusory allegations are insufficient to state a claim under § 1983. Ivey v. Board
8 of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

9 **II. THE COMPLAINT**

10 Plaintiff identifies the following as defendants to this action: Superior Court Judge Darryl B.
11 Ferguson, Deputy District Attorney Phillip Cline, Deputy Public Defender Greg Hagopian, and
12 Plaintiff’s former paid defense counsel, Albert Garcia. (Doc. 1, Compl., at 2.) Plaintiff alleges in his
13 complaint that Defendants conspired during his criminal proceedings to “intentionally and wantonly”
14 deprive Plaintiff of his rights under the Fourth, Fifth, Sixth, Seventh, Eighth and Fourteenth
15 Amendments. (Id. at 3.) In terms of relief, Plaintiff seeks an injunction precluding the Defendants from
16 representing him. (Id. at 6.) Plaintiff also seeks \$50,000 in monetary damages. (Id.)

17 **III. DISCUSSION**

18 **A. Defendants Hagopian and Garcia**

19 As explained above, to state a cognizable claim under § 1983, a plaintiff must allege facts from
20 which it may be inferred that (1) plaintiff was deprived of a federal or constitutional right, and (2) the
21 person who deprived plaintiff of that right acted under color of state law. West v. Atkins, 487 U.S. at
22 48. In general, defense attorneys representing the accused in a criminal matter do not act under color
23 of state law. Polk County v. Dodson, 454 U.S. 312, 325 (1981). However, where, as here, the plaintiff
24 claims that his defense attorneys conspired with state officials in order to obtain a conviction, the
25 attorneys may be held liable under § 1983. See Kimes v. Stone, 84 F.3d 1121, 1126 (9th Cir. 1996)
26 (“[P]rivate parties who corruptly conspire with a judge in conjunction with the judge’s performance of
27 an official judicial act are acting under color of state law for the purpose of § 1983[.]”) (citing Dennis
28 v. Sparks, 449 U.S. 24, 27-28 (1980)).

1 Plaintiff's conspiracy allegations, however, are vague and conclusory. In order to plead a viable
2 conspiracy claim under § 1983, a plaintiff must allege facts demonstrating an agreement or meeting of
3 the minds between defendants to violate plaintiff's constitutional rights. Franklin v. Fox, 312 F.3d 423,
4 441 (9th Cir. 2001). Here, Plaintiff alleges that Defendants Hagopian and Garcia conspired with
5 Superior Court Judge Ferguson, a state actor, to "intentionally and wantonly" deprive Plaintiff of his
6 constitutional rights. However, there are no facts in the complaint demonstrating the existence of any
7 agreement or meeting of the minds between Defendants Hagopian and Garcia and Superior Court Judge
8 Ferguson. In fact, Plaintiff does not even indicate what actions taken by these defendants he actually
9 disputes or what specific constitutional right he believes was violated. Plaintiff simply relies on his
10 naked assertion that evidence of a conspiracy exists. Such is insufficient to state a cognizable claim.
11 See Iqbal, 129 S. Ct. at 1949 (the complaint "must contain sufficient factual matter" to state a claim that
12 is "plausible on its face").

13 Moreover, Plaintiff's conspiracy claims may be barred under Heck v. Humphrey, 512 U.S. 477
14 (1994). In Heck, the United States Supreme Court held that a prisoner may not seek damages under
15 § 1983 based on allegations that imply the invalidity of his confinement until the prisoner has
16 established, through appropriate state remedies or a federal habeas action, that his confinement is illegal.
17 512 U.S. at 486-87. In this case, Plaintiff seeks monetary damages for actions taken by Defendants
18 Hagopian and Garcia during his criminal proceedings. Assuming these actions violated Plaintiff's
19 constitutional rights, as Plaintiff's alleges, Plaintiff's success on his claims would likely imply the
20 invalidity of his conviction and confinement. Thus, unless Plaintiff can demonstrate that his conviction
21 relating to these matters has been overturned, his conspiracy claims against Defendants Hagopian and
22 Garcia appear to be barred under Heck.

23 **B. Defendants Judge Ferguson and Deputy District Attorney Cline**

24 In addition to the reasons discussed above, Plaintiff's conspiracy claim against Judge Ferguson
25 may also fail because the judge is immune from suit. "Judicial immunity is applicable to § 1983 suits."
26 O'Neil v. City of Lake Oswego, 642 F.2d 367, 368 n.3 (9th Cir. 1981). "Judges are immune from
27 damage actions for judicial acts taken within the jurisdiction of their courts." Ashelman v. Pope, 793
28 F.2d 1072, 1075 (9th Cir. 1986) (en banc). Whether an act is judicial depends on "the nature of the act

1 itself, i.e., whether it is a function normally performed by a judge, and . . . the expectations of the parties,
2 i.e., whether they dealt with the judge in his judicial capacity.” Stump v. Sparkman, 435 U.S. 349, 360
3 (1978). These considerations are to be construed generously in favor of the judge and a finding of
4 immunity. Adams v. McIlhany, 746 F.2d 294, 297 (5th Cir. 1985).

5 Deputy District Attorney Cline, in his role as a prosecutor, may also be entitled to absolute
6 immunity from § 1983 claims. Imbler v. Pachtman, 424 U.S. 409, 427 (1976). Prosecutorial immunity
7 extends to protect a prosecutor who acts within his or her authority in a quasi-judicial capacity. Id. at
8 430-31. Where a prosecutor acts as an advocate “in initiating a prosecution and in presenting the state’s
9 case,” absolute immunity applies. Ybarra v. Reno Thunderbird Mobile Home Village, 723 F.2d 675,
10 678 (9th Cir. 1984) (quoting Imbler, 424 U.S. at 431).

11 Similar to his allegations against Defendants Hagopian and Garcia, Plaintiff fails to specify
12 which actions taken by Judge Ferguson or Defendant Cline Plaintiff actually contests. Nevertheless,
13 assuming that Plaintiff is attempting to challenge actions that are consistent with an alleged conspiracy
14 to obtain a criminal conviction, Plaintiff fails to state a cognizable claim. See Ashelman, 793 F.2d at
15 1078 (“We therefore hold that a conspiracy between judge and prosecutor to predetermine the outcome
16 of a judicial proceeding, while clearly improper, nevertheless does not pierce the immunity extended to
17 judges and prosecutors.”).

18 **C. Leave to Amend**

19 The Court will provide Plaintiff with the opportunity to file an amended complaint curing the
20 deficiencies, to the extent possible, identified by the Court in this order. See Noll v. Carlson, 809 F.2d
21 1446, 1448-49 (9th Cir. 1987) (“A pro se litigant must be given leave to amend his or her complaint
22 unless it is absolutely clear that the deficiencies of the complaint could not be cured by amendment.”)
23 (internal quotations omitted). If Plaintiff elects to file an amended complaint, he is cautioned that he
24 may not change the nature of this suit by adding new, unrelated claims. See George v. Smith, 507 F.3d
25 605, 607 (7th Cir. 2007) (no “buckshot” complaints). Plaintiff is also advised that once he files an
26 amended complaint, his original pleadings are superceded and no longer serve any function in the case.
27 See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Thus, the amended complaint must be “complete
28 in itself without reference to the prior or superceded pleading.” Local Rule 220. “All causes of action

1 alleged in an original complaint which are not [re-]alleged in an amended complaint are waived.” King
2 v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (citations omitted).

3 **IV. CONCLUSION**

4 In accordance with the above, it is HEREBY ORDERED that:

- 5 1. Plaintiff’s complaint is dismissed;
- 6 2. Plaintiff is granted thirty (30) days from the date of this order to file an amended
7 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules
8 of Civil Procedure, and the Local Rules; the amended complaint must bear the docket
9 number assigned to this case and must be labeled “Amended Complaint”;
- 10 3. The Clerk of the Court is directed to send Plaintiff the form complaint for use in a civil
11 rights action; and
- 12 4. Plaintiff is cautioned that failure to comply with this order will result in a
13 recommendation that this action be dismissed. See Fed. R. Civ. P. 41(b).

14
15 IT IS SO ORDERED.

16 Dated: January 17, 2011

17 /s/ Jennifer L. Thurston
18 UNITED STATES MAGISTRATE JUDGE
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