

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

RIMON HANNA,)	1:12-CV-443 AWI DLB
)	
Plaintiff,)	ORDER VACATING
)	HEARING, ORDER ON
v.)	DEFENDANT’S MOTION TO
)	DISMISS, AND ORDER
THE CITY OF FRESNO/FRESNO)	REMANDING MATTER TO
POLICE DEPARTMENT, THE)	FRESNO COUNTY SUPERIOR
COUNTY OF FRESNO/FRESNO)	COURT
COUNTY DISTRICT ATTORNEY’S)	
OFFICE, FRESNO COUNTY)	
DISTRICT ATTORNEY ELIZABETH)	(Doc. Nos. 4, 5)
A. EGAN, and DOES 1 through 100)	
inclusive,)	
Defendants.)	

This case was removed by Defendants on March 19, 2012, from the Fresno County Superior Court. Defendants have noticed for hearing and decision motions to dismiss under Federal Rules of Civil Procedure 12(b)(6). The matters were scheduled for hearing to be held on May 7, 2012. Pursuant to Local Rule 230(c), Plaintiff was required to file either an opposition or a notice of non-opposition no later than April 23, 2012. Plaintiff failed to do so. Due to Plaintiff’s failure to file a timely opposition or notice of non-opposition, he is in violation of the Local Rules. Plaintiffs are further not entitled to be heard at oral argument in opposition to the motion. See Local Rule 230(c).

The Court has reviewed Defendants’ motion and the applicable law, and has determined that the motion is suitable for decision without oral argument. See Local Rule 230(h). The Court will issue the following order, which disposes of the Defendants’ motion and remands this case to the Fresno County Superior Court.

1 **Factual Background**

2 Plaintiff filed suit in the Fresno County Superior Court on May 16, 2011, but did not
3 serve the Fresno County District Attorney’s Office until March 14, 2012. Plaintiff’s complaint
4 alleges one federal cause of action under 42 U.S.C. § 1983 against Defendant Elizabeth Egan,
5 and alleges state law causes of action against all Defendants for negligence, malicious
6 prosecution, abuse of process, false arrest and imprisonment, negligent emotional distress, and
7 right to liberty.

8 Plaintiff alleges that on April 12, 2010, the criminal prosecution against him was
9 dismissed upon motion from the Fresno County District Attorney’s office. Plaintiff alleges the
10 dismissal followed the inability to obtain a guilty verdict against him. Plaintiff alleges that he
11 was falsely prosecuted under Penal Code §§ 286(c)(2), 261(a)(2), and 664. Plaintiff alleges that
12 the criminal investigation was negligently conducted, and the resulting reports contained false
13 information. Plaintiff alleges that his prosecution was negligent and unjust, and was motivated
14 by fraud and racial animosity.

15
16 **Defendant Egan’s Motion**

17 *Defendant’s Argument*

18 Egan argues that dismissal with prejudice of all claims against her is appropriate. With
19 respect to the federal claim, Egan argues that dismissal of this claim is appropriate because the
20 factual allegations do not meet the elements of a § 1983 claim. Egan also argues that she is
21 entitled to Eleventh Amendment immunity and absolute prosecutorial immunity.

22 *Plaintiff’s Opposition*

23 Plaintiff has filed no opposition or response of any kind.

24 *Legal Framework*

25 Under Federal Rule of Civil Procedure 12(b)(6), a claim may be dismissed because of the
26 plaintiff’s “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).
27 To “avoid a Rule 12(b)(6) dismissal, “a complaint must contain sufficient factual matter,
28 accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 129

1 S.Ct. 1937, 1949 (2009); see Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007). “A
2 claim has facial plausibility when the plaintiff pleads factual content that allows the court draw
3 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 129 S.Ct.
4 at 1949. If a Rule 12(b)(6) motion is granted, leave to amend need not be granted where
5 amendment would be futile. Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002).

6 Discussion

7 a. 42 U.S.C. § 1983 Claim

8 The Court agrees with Egan that the factual allegations in the Complaint fail to state a 42
9 U.S.C. § 1983 claim. That cause of action does not identify which federal law or Constitutional
10 right was violated by Egan.

11 More importantly, however, the Complaint suggests that Egan was acting in her
12 “prosecutorial capacity.” Plaintiff has not challenged Egan’s reading of the Complaint or Egan’s
13 arguments and assertions. That is, Plaintiff has failed to refute Egan’s arguments that she is
14 entitled to both Eleventh Amendment and absolute prosecutorial immunity. Therefore, even
15 assuming that the 42 U.S.C. § 1983 claim was properly alleged, Egan is entitled to both Eleventh
16 Amendment and absolute prosecutorial immunity. See Van de Kamp v. Goldstein, 129 S.Ct.
17 855, 860 (2009); Imbler v. Pachtman, 424 U.S. 409, 431 (1976); Del Campo v. Kennedy, 517
18 F.3d 1070, 1073 (9th Cir. 2008); Weiner v. San Diego County, 210 F.3d 1025, 1031 (9th Cir.
19 2000); Roe v. City & County of San Francisco, 109 F.3d 578, 583-84 (9th Cir. 1997); Ashelman
20 v. Pope, 793 F.2d 1072, 1078-79 (9th Cir. 1986). Dismissal of this claim with prejudice is
21 appropriate. See id.

22 b. Remaining State Law Claims

23 The basis for removal to this Court was the presence of a federal question. However, the
24 Court has dismissed with prejudice Plaintiff’s only federal cause of action. When removal is
25 based on the presence of a federal cause of action, a district court may remand the pendent or
26 supplemental state law claims to the state court once the federal claims have been eliminated.
27 See Lee v. City of Beaumont, 12 F.3d 933, 937 (9th Cir. 1993). In fact, “it is generally preferable
28 for a district court to remand remaining pendent claims to state court.” Id. at 937. Since all

1 federal claims have been resolved and only state law claims remain, the Court will remand the
2 remaining state law claims to the Kings County Superior Court. See id.

3
4 **ORDER**

5 Accordingly, IT IS HEREBY ORDERED that:

- 6 1. The May 7, 2012, hearing date is VACATED;
7 2. Defendant Elizabeth Egan’s motion to dismiss (Doc. No. 4) the 42 U.S.C. § 1983 claim
8 against her is GRANTED with prejudice;
9 3. The Court declines to exercise supplemental jurisdiction over the remainder of Plaintiff’s
10 state law claims and expresses no opinion about those state law claims or about the City
11 of Fresno’s motion to dismiss (Doc. No. 5); and
12 4. The Clerk shall immediately REMAND this case to the Fresno County Superior Court.

13 IT IS SO ORDERED.

14 Dated: May 1, 2012

15 
16 _____
17 CHIEF UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28