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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHANNON WOODROW,
Plaintiff,
v.
COUNTY OF MERCED, *et al.*,
Defendants.

No. 1: 13-cv-01505-AWI-BAM
**ORDER SCREENING FIRST AMENDED
COMPLAINT AND DISMISSING THE
COMPLAINT WITH LEAVE TO AMEND**
30 DAY DEADLINE

I. INTRODUCTION

Plaintiff Channon Woodrow (“Plaintiff”) proceeds pro se and in forma pauperis in this civil action. Plaintiff’s First Amended Complaint (“FAC”) is before the Court for screening.

The Court is required to screen complaints brought by persons proceeding in pro per. 28 U.S.C. § 1915A(a). Plaintiff’s Complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,

1 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
2 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
3 unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
4 (internal quotation marks and citation omitted).

5 While persons proceeding in pro se are still entitled to have their pleadings liberally
6 construed and to have any doubt resolved in their favor, the pleading standard is now higher,
7 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), and to survive screening,
8 Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the
9 Court to reasonably infer that each named defendant is liable for the misconduct alleged, *Iqbal*,
10 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss v. United States Secret*
11 *Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted
12 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
13 plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); *Moss*,
14 572 F.3d at 969.

15 II. PLAINTIFF’S ALLEGATIONS

16 Plaintiff’s Complaint, touching on a variety of alleged wrongs, alleges nine counts¹
17 against multiple defendants.² Plaintiff’s complaint appears to challenge several arrests and court
18 proceedings. Plaintiff also challenges the conduct of various public officials, including judges,
19 attorneys, and police officers regarding a criminal action brought against him and an unlawful
20 detainer action. Plaintiff also challenges the conduct of several private actors who are allegedly
21 responsible for the unlawful detainer action and theft of personal property.

22 In May 2013, Plaintiff alleges Officer B and Anna Hazel arrested Plaintiff pursuant to a
23 warrant which he was never shown and held him in a “drunk cell.” (doc. 7 p. 7-8.)³ Both Officer
24

25 ¹ The majority of these “counts” allege civil rights violations under 42 U.S.C. Section 1983, predicated on a variety
of alleged conduct.

26 ² The Defendants in this case are as follows: The County of Merced; Thomas I Cavallero; Walter Wall; Anna Hazel;
27 Officer ‘B’, Chris Jaskowaik, Randall Naiman, County of Merced Sherriff Department; Superior Court of California,
Salvadori Realty, Naiman Law Group. Various other entities or persons are identified in the body of the FAC.

28 ³ All references to pagination of specific documents pertain to those as indicated on the upper right corners via the

1 B and Anna Hazel are alleged to be Merced Sherriff investigators. (Doc. 7 p. 5.) He was arrested
2 on Friday morning and did not see a Magistrate for 3 days over the weekend and was delayed
3 being brought before a Magistrate. (Doc. 7 p. 9.) Plaintiff alleges they had no right to
4 “incarcerate” him. (*id.*)

5 Plaintiff alleges that Anna Hazel was biased in her criminal investigation and made false
6 statements in her police reports. (Doc. 7 p.10.) Plaintiff appears to allege that Anna Hazel
7 conspired and colluded with others to deprive Plaintiff of property. (Doc. 7 p. 11.)⁴

8 Defendant Walter Wall is a Merced District Attorney. Plaintiff alleges that Wall did not
9 properly indict, investigate or charge Plaintiff with a crime. (Doc. 7 p. 12.) Plaintiff alleges that
10 failure to properly review information led to Plaintiff’s false indictment, false arrests and false
11 confinement. (Doc. 7 p. 12.) Wall and Anna Hazel called Plaintiff “sovereign citizen” to demean
12 and subordinate Plaintiff.

13 Plaintiff alleges that his home was illegally searched and property was unlawfully seized.
14 (Doc. 7 p. 15) Plaintiff was incarcerated for 10 days.

15 Plaintiff was arrested again on June 12, 2013 by defendant Officer Chris Jaskowiak in
16 court during a court appearance by Plaintiff. (Doc. 7 p. 16.) Plaintiff’s knee was injured in the
17 arrest.

18 Plaintiff alleges unlawful conditions of release where placed on him by the presiding
19 judicial officer, including a mental evaluation. (Doc. 7 p. 17-18.) He was silenced in court and
20 denied process and was caused emotional distress. (Doc. 7 p. 18.) Plaintiff alleges that all
21 defendants conspired with each other involving unlawful arrest, detention, harassment,
22 intimidation, and malicious prosecution. (Doc. 7 p. 19.)

23 Plaintiff also alleges private entities harmed him in seizure of his real property. (Doc. 7
24 p.18 et seq.) Plaintiff alleges his home was seized by defendants Randal Naiman, Naiman Law
25 Group and Salvdori Realty. Plaintiff alleges that the seizure was improper and that the unlawful
26 detainer violated his rights. (Doc. 7 p. 20.) Plaintiff alleges that foreclosure was improper.

27 CM/ECF electronic court docketing system.

28 ⁴ Plaintiff does not specifically allege these facts, but exhibits attached to the complaint indicate that Plaintiff was prosecuted for allegedly fraudulently creating a lease and residing in the premises.

1 Plaintiff alleges that the private entities conspired to deprive plaintiff of his property. (Doc. 7 p.
2 21.) Plaintiff states that the conspiracy is shown by the proximity of his arrest and the filing of
3 the unlawful detainer action.

4 Plaintiff alleges that his rights have been violated:

- 5 - Count 1: (1) the right to be free from unreasonable search and seizure and arrest, (2)
6 the right not to be deprived of liberty and property without due process of law, (3)
7 excessive force, (4) just compensation for taking of property (against Anna Hazel,
8 Officer B, Chris Jaskowiak, County of Merced Sherriff Department and Jail Division,
9 Superior Court of California and County of Merced) pursuant to 42 U.S.C. §1983.
- 10 - Count 2: abuse of process, intimidating party and plaintiff, obstruction of justice and
11 due process, access to grand jury and right to confront accuser (against Walter Wall,
12 Anna Hazel, Chris Jaskowiak, County of Merced Sherriff Department and Jail
13 Division, Superior Court of California and County of Merced) pursuant to 42 U.S.C.
14 §1983.
- 15 - Count 3: Conspiracy against all defendants pursuant to 18 U.S.C. §241.
- 16 - Count 4, deprivation of rights under color of law pursuant to 18 U.S.C. §242 against
17 all defendants.
- 18 - Count 5, gross negligence against all defendants pursuant to 42 U.S.C. §1986 against
19 all defendants (negligent training and supervision).
- 20 - Count 6, breach of fiduciary duty against all defendants.
- 21 - Count 7, violations of various California Penal Code sections, including 115, 118,
22 118.1.
- 23 - Count 8, deprivation of right to property pursuant to 42 U.S.C. §1982.
- 24 - Count 9, False indictment and criminal suit pursuant to California Penal Code §182.

25 III. DISCUSSION

26 A. **Plaintiff's Complaint Fails to Comply with Rule 8**

27 Plaintiff's complaint does not contain a "short and plain statement of the claim showing
28 that he is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pursuant to Rule 8(a) of the Federal Rules of

1 Civil Procedure, the complaint or amended complaint must contain a “short and plain statement
2 of the claim showing that the pleader is entitled to relief.” Although the Federal Rules adopt a
3 flexible pleading policy, a complaint must give fair notice and state the elements of the claim
4 plainly and succinctly. *Jones v. Community Redev. Agency*, 733 F.2d 646, 649 (9th Cir. 1984).
5 While detailed allegations are not required, a plaintiff must set forth “the grounds of his
6 entitlement to relief[.]” which “requires more than labels and conclusions, and a formulaic
7 recitation of the elements of a cause of action. . . .” *Bell Atlantic Corp. v. Twombly*, 550 U.S.
8 544, 555, 127 S.Ct. 1955, 1964-65 (2007) (internal quotations and citations omitted).

9 Plaintiff’s complaint is neither short nor plain. Plaintiff’s Complaint totals thirty-six pages
10 and over 120 pages of exhibits. Plaintiff’s complaint does not clearly set forth the factual
11 allegations underlying his claims. Plaintiff fails to describe specific actions taken each of the
12 defendants named in his complaint that violated his constitutional rights. Many of the allegations
13 are conclusory and not sufficiently detailed as to what each individual defendant did to violate his
14 rights. Some allegations are sufficiently specific but as explained below they are improperly
15 joined. Plaintiff will be granted leave to amend. In any amended complaint, Plaintiff should set
16 forth facts, not conclusions, as to what each defendant did to violate Plaintiff’s rights.

17 **B. Plaintiff’s Complaint Fails to Comply with Rule 18**

18 Plaintiff is raising numerous claims based on discrete events against different defendants.
19 Plaintiff may not bring unrelated claims against unrelated parties in a single action. Fed. R. Civ.
20 P. 18(a), 20(a)(2); *Owens v. Hinsley*, 635 F.3d 950, 952 (7th Cir. 2011); *George v. Smith*, 507
21 F.3d 605, 607 (7th Cir. 2007). Plaintiff may bring a claim against multiple defendants so long as
22 (1) the claim arises out of the same transaction or occurrence, or series of transactions and
23 occurrences, and (2) there are common questions of law or fact. Fed. R. Civ. P. 20(a)(2);
24 *Coughlin v. Rogers*, 130 F.3d 1348, 1351 (9th Cir. 1997); *Desert Empire Bank v. Insurance Co.*
25 *of North America*, 623 F.3d 1371, 1375 (9th Cir. 1980). Only if the defendants are properly
26 joined under Rule 20(a) will the Court review the other claims to determine if they may be joined
27 under Rule 18(a), which permits the joinder of multiple claims against the same party.

28 Plaintiff may not assert multiple claims against unrelated defendants in this action.

1 Plaintiff appears to allege an overarching conspiracy between various public officials and private
2 actors in an effort to commit a “fraud upon the court” and deprive Plaintiff of his civil rights.
3 However, the alleged unlawful arrests or excessive force claims are not properly joined with
4 claims alleging an improper criminal proceeding, and these claims are not properly joined with
5 claims related to the unlawful detainer proceedings. Thus multiple claims against a single party
6 are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against
7 Defendant 2. Unrelated claims against different defendants belong in different suits to prevent
8 the sort of morass a multiple claim, multiple defendant suit produces. In his second amended
9 complaint, Plaintiff shall choose which claims he wishes to pursue in this action.

10 If Plaintiff does not do so and his amended complaint sets forth unrelated claims which
11 violate joinder rules, the Court will dismiss the claims it finds to be improperly joined. Plaintiff
12 is cautioned that if he fails to make the requisite election regarding which category of claims to
13 pursue and his amended complaint sets forth improperly joined claims, the Court will determine
14 which claims proceed and which will be dismissed. *Visendi v. Bank of America, N.A.*, 733 F3d
15 863, 870-71 (9th Cir. 2013).

16 Insofar as Plaintiff references exhibits attached to the complaint as the source of the facts
17 underlying this claim, the court notes that these exhibits number nearly 120 pages, and Plaintiff is
18 cautioned that it is not the Court’s duty to wade through exhibits to determine whether cognizable
19 claims have been stated. Since Plaintiff’s complaint is not in compliance with Rule 8(a) or Rule
20 18, the Court declines to expend its resources with attempting to sort out his claims.

21 **C. Linkage**

22 The Civil Rights Act under which this action was filed provides:

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

28 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link
between the actions of the defendants and the deprivation alleged to have been suffered by
Plaintiff. *See Monell v. Department of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d

1 611 (1978); *Rizzo v. Goode*, 423 U.S. 362, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976). The Ninth
2 Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right,
3 within the meaning of section 1983, if he does an affirmative act, participates in another’s
4 affirmative acts, or omits to perform an act which he is legally required to do that causes the
5 deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.1978). To
6 state a claim, Plaintiff must demonstrate that each defendant personally participated in the
7 deprivation of his rights. *Iqbal*, 129 S.Ct. at 1949; *Simmons v. Navajo County, Ariz.*, 609 F.3d
8 1011, 1020-21 (9th Cir. 2010). There must be an actual connection or link between the actions of
9 the defendants and the deprivation alleged to have been suffered by Plaintiff. *Rizzo v. Goode*, 423
10 U.S. at 371. Under section 1983, Plaintiff is required to show that (1) each defendant acted under
11 color of state law and (2) each defendant deprived him of rights secured by the Constitution or
12 federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006). Plaintiff must
13 demonstrate that each defendant personally participated in the deprivation of his rights. *Jones*,
14 297 F.3d at 934. There is no respondeat superior liability under section 1983, and therefore, each
15 defendant is only liable for his or her own misconduct. *Iqbal*, 129 S.Ct. at 1948-49.

16 In his second amended complaint, plaintiff must clearly link each named defendant to
17 alleged wrongful conduct. If Plaintiff elects to amend his complaint, Plaintiff must link the
18 actions of these defendants to an alleged deprivation. While some defendant’s conduct is
19 specifically identified, some defendant’s conduct is not. Just as in plaintiff’s original complaint,
20 the FAC again repeatedly refers to all defendants collectively and fails to give each defendant
21 notice of the claims against them.

22 **D. Immunity**

23 State court judges and prosecutors are immune from liability under 42 U.S.C. § 1983. See
24 *Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 922 (9th Cir. 2004) (“Absolute immunity is
25 generally accorded to judges and prosecutors functioning in their official capacities”); *Ashelman*
26 *v. Pope*, 793 F.2d 1072, 1075 (9th Cir.1986) (holding that judges and prosecutors are immune
27 from liability for damages under section 1983). To the extent Plaintiff alleges violations based
28 upon prosecutorial conduct, prosecutors are absolutely immune.

1 To the extent Plaintiff asserts claims against Judge Garcia,⁵ these claims similarly fail
2 because Judge Garcia is protected by absolute judicial immunity. “Few doctrines were more
3 solidly established at common law than the immunity of judges from liability for damages for acts
4 committed within their judicial jurisdiction.” *Pierson v. Ray*, 386 U.S. 547, 553–54 (1967).
5 Judicial immunity “is an immunity from suit, not just from the ultimate assessment of damages.”
6 *Mireless v. Waco*, 502 U.S. 9, 11 (1991); *see also Stump v. Sparkman*, 435 U.S. 349, 356 (1978)
7 (“A judge will not be deprived of immunity because the action he took was in error, was done
8 maliciously, or was in excess of his authority.”). Plaintiff’s claims against Judge Garcia are based
9 solely on his judicial rulings in the state unlawful detainer action or related to Plaintiff’s detention
10 and are therefore barred by judicial immunity.

11 In addition, government officials enjoy qualified immunity from civil damages unless
12 their conduct violates “clearly established statutory or constitutional rights of which a reasonable
13 person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738
14 (1982). “Qualified immunity balances two important interests - the need to hold public officials
15 accountable when they exercise power irresponsibly and the need to shield officials from
16 harassment, distraction, and liability when they perform their duties reasonably,” *Pearson v.*
17 *Callahan*, 555 U.S. 223, 231, 129 S.Ct. 808, 815 (2009), and protects “all but the plainly
18 incompetent or those who knowingly violate the law,” *Malley v. Briggs*, 475 U.S. 335, 341, 106
19 S.Ct. 1092, 1096 (1986). Therefore, claims against prosecutors and judges do not state
20 cognizable claims.

21 **E. Relief Barred by Heck**

22 It is unclear whether Plaintiff will be able to state a claim for unlawful arrest/search and
23 seizure or false imprisonment. *Heck v. Humphrey* may bar any such claims.

24 In *Heck*, the United States Supreme Court held that a section 1983 claim cannot proceed
25 when “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction
26 or sentence.” *Heck v. Humphrey*, 512 U.S. 477, 486–87 (1994). In *Heck v. Humphrey*, the

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28 ⁵ The caption does not name Judge Garcia, but the body of the complaint alleges judicial conduct by Judge Garcia violated Plaintiff’s constitutional rights. (See e.g., Doc. 7 p.17-19.)

1 Supreme Court held:

2 [I]n order to recover damages for allegedly unconstitutional conviction or
3 imprisonment, or for other harm caused by actions whose unlawfulness would render a
4 conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or
5 sentence has been reversed on direct appeal, expunged by executive order, declared
6 invalid by a state tribunal authorized to make such determination, or called into question
7 by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.

8 “*Heck*, in other words, says if a criminal conviction arising out of the same facts stands
9 and is fundamentally inconsistent with the unlawful behavior for which section 1983 damages are
10 sought, the 1983 action must be dismissed.” *Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir.1996).
11 *Heck*, however, does not bar section 1983 claims arising from events that occurred before or after
12 the conduct for which the plaintiff was convicted. *Smith v. City of Hemet*, 394 F.3d 689, 695–96
13 (9th Cir.2005) (en banc).

14 In the complaint, Plaintiff states that he was criminally prosecuted. Plaintiff’s claims may
15 be barred by *Heck*. The Court cannot determine from the allegations whether the claims are *Heck*
16 barred and therefore leave to amend will be granted. In his amended complaint, Plaintiff should
17 set forth the charges for which he was convicted, if at all, among other clarifications.

18 Plaintiff also claims that the police and investigators falsely reported events. As to these
19 potential claims, the Ninth Circuit has recognized “a clearly established constitutional due process
20 right not to be subjected to criminal charges on the basis of false evidence that was deliberately
21 fabricated by the government.” *Devereaux v. Abbey*, 263 F.3d 1070, 1074–75 (9th Cir.2001); *see*
22 *also Costanich v. Dep’t of Soc. & Health Servs.*, 627 F.3d 1101, 1111 (9th Cir.2010) (relying on
23 *Devereaux* to hold that a state investigator “who deliberately mischaracterizes witness statements
24 in her investigative report also commits a constitutional violation”).

25 There are many remedies to cure an unconstitutional conviction, but a section 1983 is not
26 one of them, pursuant to *Heck*. Until any conviction is reversed by an appropriate state or in
27 some other manner, a section 1983 claim is not cognizable. Nonetheless, the allegations are
28 sufficiently unclear as to Plaintiff’s conviction that amendment should be permitted.

26 **F. Excessive Force**

27 “Under the Fourth Amendment, officers may only use such force as is ‘objectively
28

1 reasonable' under the circumstances." *Jackson v. City of Bremerton*, 268 F.3d 646, 651 (9th
2 Cir.2001) (citing *Graham v. Conner*, 490 U.S. 386, 397 (1989)). The Fourth Amendment's
3 objective reasonableness standard applies. *Lolli v. County of Orange*, 351 F.3d 410, 415 (9th Cir.
4 2003). The inquiry is whether Defendants' actions were objectively reasonable in light of the
5 facts and circumstances confronting them, without regard to their underlying intent or motivation.
6 *Id.* (citing *Graham*, 490 U.S. at 397) (quotation marks omitted). The nature and quality of the
7 intrusion on Plaintiff's Fourth Amendment interests must be balanced against the countervailing
8 governmental interests at stake. *Id.* (citing *Graham*, 490 U.S. at 397) (quotation marks omitted).
9 Factors may include the severity of the incident giving rise to the use of force, whether Plaintiff
10 posed an immediate threat to the safety of Defendants or others, and whether Plaintiff was
11 actively attempting to avoid being subdued or brought under control. *See Gibson*, 290 F.3d at
12 1198 (citation omitted).

13 Plaintiff alleges that Officer Jaskowiak witnessed Plaintiff committing a crime in Court,
14 arrested Plaintiff and as a result, Plaintiff suffered a knee contusion. Plaintiff's allegations are
15 conclusory and fail to state sufficient facts as to what occurred for the Court to determine whether
16 Plaintiff states a plausible claim. Leave to amend will be granted.

17 **G. County of Merced, County of Merced Sheriff's Department, and Jail Division**

18 A claim for civil rights violations pursuant to 42 U.S.C. § 1983 requires a "person" who
19 acted under color of state law. 42 U.S.C. § 1983. Local governmental units, such as counties or
20 municipalities, are considered "persons" within the meaning of Section 1983. *Will v. Michigan*
21 *Dept. of State Police*, 491 U.S. 58, 70, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Municipal
22 departments and sub-units, including police departments, are generally not considered "persons"
23 within the meaning of Section 1983. *United States v. Kama*, 394 F.3d 1236, 1239 (9th Cir.2005)
24 (Ferguson, J., concurring) (findings municipal police departments and bureaus are generally not
25 considered "persons" within the meaning of 42 U.S.C. § 1983); *see also Sanders v. Aranas*, 2008
26 WL 268972, *3 (the Fresno Police Department is not a proper defendant because it is a sub-
27 department of the City of Fresno and is not a person within the meaning of § 1983).

28 A municipality, such as the County of Merced, may not be held responsible for the acts of

1 its employees under a respondent superior theory of liability. *Monell v. Dep't of Soc. Servs.*, 436
2 U.S. 658, 690-91, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978); *Fuller v. City of Oakland*, 47 F.3d 1522,
3 1534 (9th Cir.1995). Rather, to state a claim for municipal liability, a plaintiff must allege that he
4 suffered a constitutional deprivation that was the product of a policy or custom of the local
5 government unit. See *City of Canton, Ohio, v. Harris*, 489 U.S. 378, 385, 109 S.Ct. 1197, 103
6 L.Ed.2d 412 (1989). A claim against a local governmental unit for municipal liability requires an
7 allegation that “a deliberate policy, custom or practice ... was the ‘moving force’ behind the
8 constitutional violation ... suffered.” *Galen v. County of Los Angeles*, 477 F.3d 652, 667 (9th
9 Cir.2007) (citing *Monell*, 436 U.S. at 694–695.)

10 The County of Merced Sheriff’s Department and Jail Division are not proper defendants
11 because they are sub-divisions of a public entity.⁶ Plaintiff also has failed to allege facts
12 demonstrating that the constitutional violations were caused by a deliberate policy, custom or
13 practice of the public entity. If Plaintiff elects to amend his complaint, he must allege the proper
14 political subdivision and identify and describe the public entity’s policy, custom or practice which
15 violated his constitutional rights.

16 **H. Official Capacity of Individual Defendants**

17 “There is no longer a need to bring official-capacity actions against local government
18 officials, for under *Monell [v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658 (1978)] ...
19 local government units can be sued directly for damages and injunctive or declaratory relief.”
20 *Kentucky v. Graham*, 473 U.S. 159, 167 n. 14 (1985). Thus, suits against a public entity and its
21 official in his or her official capacity may be duplicative. See *Larez v. City of Los Angeles*, 946
22 F.2d 630, 646 (9th Cir.1991) (“A suit against a governmental officer in his official capacity is
23 equivalent to a suit against the governmental entity itself.”) “Personal-capacity suits seek to
24 impose personal liability upon a government official for actions he takes under color of state law.
25 Official-capacity suits, in contrast, generally represent only another way of pleading an action
26 against an entity of which an officer is an agent. As long as the government entity receives notice

27 ⁶ The Jail Division is not named in the FAC caption but is listed in the body of the FAC. Likewise, in the body of the
28 FAC, Plaintiff also alleges wrongful conduct of the City of Merced Police Department. The City of Merced Police
Department is not a named defendant and even so, would be the improper because it is a sub-division of the
municipality. (Doc. 7 p.14.)

1 and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be
2 treated as a suit against the entity. *Kentucky v. Graham*, 473 U.S. 159, 165–66 (1985) (citations
3 omitted).

4 To the extent Plaintiff asserts the Section 1983 claim against officers in their official
5 capacities (alleged “professional” capacities), such a claim is duplicative of a claim against the
6 public entity that employs the officers. Plaintiff will be given leave to amend to name the proper
7 public entity.

8 **I. Official Capacity and Eleventh Amendment**

9 Plaintiff names the Superior Court as a defendant. The Superior Court is an arm of the
10 State of California and is immune from liability pursuant to the Eleventh Amendment. Cal.Const.
11 Art. 6, §1 (The judicial power of this State is vested in the Supreme Court, courts of appeal, and
12 superior courts, all of which are courts of record.); *Brooks v. Sulphur Springs Valley Elec. Co-op.*,
13 951 F.2d 1050, 1053 (9th Cir.1991) (“The Eleventh Amendment's jurisdictional bar covers suits
14 naming state agencies and departments as defendants, and applies whether the relief sought is
15 legal or equitable in nature.”) The Eleventh Amendment prohibits suits for monetary damages
16 against a State, its agencies, and state officials acting in their official capacities. *Aholelei v. Dep't*
17 *of Public Safety*, 488 F.3d 1144, 1147 (9th Cir.2007).

18 **J. California Penal Code Violations and Federal Criminal Statutes Violations**

19 Plaintiff seeks to impose liability against defendants based on alleged violations of
20 California Penal Code sections 182, 115, 118, and 118.1. A private right of action under a
21 criminal statute has rarely been implied. *Chrysler Corp. v. Brown*, 441 U.S. 281, 316, 99 S.Ct.
22 1705, 1725, 60 L.Ed.2d 208 (1979). Where a private right of action has been implied, “there was
23 at least a statutory basis for inferring that a civil cause of action of some sort lay in favor of
24 someone.” *Chrysler Corp.*, 441 U.S. at 316, 99 S. Ct at 1725 (quoting *Cort v. Ash*, 422 U.S. 66,
25 79, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975); see *Taylor v. Hubbard*, 2012 WL 1718055, *4 (E.D.Cal.
26 May 15, 2012); *Sohal v. City of Merced Police Dep't*, 2009 WL 961465, * 7 (E.D.Cal. Apr.8,
27 2009) (“[t]his court and courts of this circuit routinely dismiss claims based on violation of state
28 criminal statutes where the language of the statute does not confer a private right of action”). The

1 Court has reviewed the penal code sections cited by Plaintiff in their entirety and can find no
2 indication of a private right of action. Accordingly, Plaintiff's claims for violations of the
3 California Penal Code are not cognizable.

4 Plaintiff also brings claims pursuant to Federal criminal statutes. In Count 3, Plaintiff
5 alleges a Conspiracy in violation of 18 U.S. C. §241. In Count 4, Plaintiff alleges a violation of
6 18 U.S.C. §242, for deprivation of rights under color of law.

7 Neither criminal statute provides a basis for civil liability. The criminal conspiracy
8 statutes, making it a crime for two or more persons to conspire to deprive another of rights
9 secured by the Constitution or laws of the United States or to deprive another of such rights,
10 under color of law, provide no basis for civil liability. *Moore v. Kamikawa*, 940 F.Supp. 260
11 (D.Hawaii 1995), *affirmed* 82 F.3d 423. *See also Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th
12 Cir.1980) (18 U.S.C. §§241 and 242 provide no basis for civil liability). Title 18 U.S.C. §242
13 does not authorize a litigant to bring claims in civil action for alleged violations of criminal
14 statutes. *Id*; *See also Haile v. Sawyer*, 2003 WL 1907661 (N.D.Cal.2003) (Unreported), *affirmed*
15 76 Fed.Appx. 129, 2003 WL 22145851.

16 To the extent Plaintiff intends the factual allegations to fall within 42 U.S.C. §1983,
17 plaintiff must conform to pleading standards as outlined in this order.

18 **K. Private Actor is not liable under Section 1983**

19 A plaintiff can seek relief under § 1983 against persons acting under the color of state law.
20 *West v. Atkins*, 487 U.S. 42, 48 (1988). Generally, private actors do not act under color of state
21 law. *Price v. State of Hawaii*, 939 F.2d 702, 707–08 (9th Cir.1991). Randall Naiman and the
22 Naiman Law Group are not state actors and therefore are not subject to Plaintiff's Section 1983
23 claims. *Briley v. State of Cal.*, 564 F.2d 849, 855–56 (9th Cir.1977) (holding that a private
24 attorney is not a state actor and does not act under color of state law for Section 1983 purposes.)
25 Plaintiff alleges that Naiman filed an unlawful detainer action against Plaintiff. (Doc. 7 p. 156.)
26 This conduct does not rise to state action. Accordingly, Plaintiff has failed to state a cognizable
27 claim against Randall Naiman and the Naiman Law Group.

1 **L. Prompt Presentment Claim**

2 In *Gerstein*, the United States Supreme Court held that the Fourth Amendment requires a
3 prompt judicial determination of probable cause as a prerequisite to an extended pretrial detention
4 after a warrantless arrest. *Gerstein v. Pugh*, 420 U.S. 103,114, 125–126, 95 S.Ct. 854 (1975). In
5 *McLaughlin*, the court held that a jurisdiction may choose to combine the probable cause
6 determination with other pretrial procedures such as arraignment. A jurisdiction that does so
7 generally will comply with the promptness requirement of *Gerstein* if it provides the probable
8 cause determination within 48 hours of a warrantless arrest. *County of Riverside v. McLaughlin*,
9 500 U.S.44, 56, 111 S.Ct. 1661 (1991).

10 Federal and state law enforcement officials must present an arrestee to a judicial officer
11 without unreasonable delay. See Fed.R.Crim.P. 5(a); *U.S. v. Redlightning*, 624 F.3d 1090, 1106
12 (9th Cir.2010) (discussing prompt presentment requirement under Federal Rule of Criminal
13 Procedure 5(a)); *Hallstrom v. City of Garden City*, 991 F.2d 1473, 1478 (9th Cir.1993)
14 (discussing constitutional presentment requirements applicable to state law enforcement
15 officials).

16 Statutes and judicial statements often refer to a duty to take an arrested person before a
17 magistrate "immediately," "forthwith," without "unreasonable" or "undue" delay, or the like.
18 However, these statutory commands are not interpreted literally, and the basic requirement is that
19 the prisoner be brought before a magistrate as soon as reasonably possible. The intervention of a
20 Sunday or other legal holiday, during which the courts are not in session, may also justify a delay
21 in bringing an arrestee before a magistrate for arraignment. But, failure to bring the arrestee
22 before a magistrate the next Monday morning or regular business day may result in liability for
23 false imprisonment. Moreover, in some cases it has been held that the intervention of a Sunday or
24 holiday did not necessarily make the delay reasonable. See *Hallstrom v Garden City*, 991 F.2d
25 1473 (9th Cir. 1993) (arrestee was deprived of her constitutional right not to be subjected to
26 unreasonable delay in coming before magistrate, where she was arrested at 9:00 A.M. on Friday
27 and was not taken before judge until approximately 4:00 P.M. on Monday, despite fact that
28 magistrate was on call 24 hours each day, and arrestee was held impermissibly for 2 days after

1 judge directed her release on bail, in violation of her constitutional rights.) Three-day delay in
2 bringing defendant before magistrate judge following his arrest on a Friday morning for bank
3 robbery was reasonable and not unnecessary. *U.S. v. Harrold*, 679 F. Supp. 2d 1336 (N.D. Ga.
4 2009) (arresting officer looked for an available magistrate but no judge was available.)

5 Plaintiff alleges that he was arrested at 9:00 a.m. on the Friday of Mother's day weekend
6 and did not see a judge until Monday. While Plaintiff alleges ill-will by the arresting officer was
7 the reason for the delay, Plaintiff has not stated sufficient facts for violation of prompt
8 presentment. He was taken to a judge the following business day after the intervening weekend.
9 He does not allege that a magistrate was available to take his appearance or facts establishing that
10 he could have been presented earlier. Indeed, Plaintiff alleges that jail procedures delayed his
11 presentment, such as gang affiliation validation. Leave to amend will be granted.

12 **M. Doe Defendants**

13 Plaintiff identifies Officer B and other Doe defendants who he has not yet ascertained the
14 identities. The inclusion of Doe defendants under these circumstances is permissible, as plaintiff
15 may amend the complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure once the
16 identity of defendants is known through discovery or other means. *Merritt v. Los Angeles*, 875
17 F.2d 765, 768 (9th Cir. 1989); *see Swartz v. Gold Dust Casino, Inc.*, 91 F.R.D. 543, 547 (D. Nev.
18 1981).

19 **N. Amendment to the Complaint**

20 "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so
21 requires.'" *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 465 F.3d 946, 951 (9th Cir. 2006)
22 (quoting Fed. R. Civ. P. 15(a)). "Each allegation must be simple, concise, and direct." Federal
23 Rule of Civil Procedure 8(d)(1). A party must state its claims or defenses in numbered
24 paragraphs, each limited as far as practicable to a single set of circumstances. Federal Rule of
25 Civil Procedure 10(b). Although Plaintiff does make limited use of numbered paragraphs,
26 Plaintiff fails to limit each numbered paragraph to a single set of circumstances. Plaintiff's
27 paragraphs are long, rambling, and occasionally span multiple dense pages of narrative and legal
28 authority.

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- 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a second amended complaint;
- 3. Plaintiff's second amended complaint is limited to 25 pages, exclusive of exhibits, and
- 4. If Plaintiff fails to file a second amended complaint in compliance with this order, this action will be dismissed for failure to obey a court order.

IT IS SO ORDERED.

Dated: January 12, 2015

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE