

1 such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion
2 thereof, that may have been paid, the court shall dismiss the case at any time if the court
3 determines that . . . the action or appeal . . . fails to state a claim upon which relief may
4 be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

5 6 **II. PLEADING STANDARD**

7 Section 1983 “provides a cause of action for the deprivation of any rights,
8 privileges, or immunities secured by the Constitution and laws of the United States.”
9 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).

10 Section 1983 is not itself a source of substantive rights, but merely provides a method for
11 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
12 (1989).

13 To state a claim under § 1983, a plaintiff must allege two essential elements: (1)
14 that a right secured by the Constitution or laws of the United States was violated and (2)
15 that the alleged violation was committed by a person acting under the color of state law.
16 See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243,
17 1245 (9th Cir. 1987).

18 A complaint must contain “a short and plain statement of the claim showing that
19 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
20 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
21 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
22 662, 678 (2009), citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). Plaintiff
23 must set forth “sufficient factual matter, accepted as true, to state a claim to relief that is
24 plausible on its face.” Id. Facial plausibility demands more than the mere possibility that
25 a defendant committed misconduct and, while factual allegations are accepted as true,
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1 legal conclusions are not. Id. at 677-78.

2 **III. PLAINTIFF’S ALLEGATIONS**

3 Plaintiff filed his complaint while detained at Fresno County Jail. Plaintiff names
4 the following individuals as Defendants: (1) Detective Charles Renfro of the Fresno
5 County Police Department, and (2) Midori Howo, deputy district attorney for Fresno
6 County. Plaintiff complains of acts that occurred in a case pending against him in state
7 court.

8 Plaintiff’s allegations can be summarized essentially as follows:

9 Defendant Howo violated a state court order by obtaining and serving a body
10 attachment order against a complaining witness without first providing the court with
11 proof of service of a subpoena. Defendant Renfro provided false testimony at a
12 preliminary hearing, and Defendant Howo failed to correct the false testimony.
13 Defendant Howo also told the complaining witness what to say at the preliminary
14 hearing.

15 Plaintiff seeks to suppress the complaining witness’s testimony and Defendant
16 Renfro’s testimony and “work product,” to remove Defendant Renfro from the case, and
17 to “void” the preliminary hearing. Plaintiff also seeks \$28.7 million in damages.

18 **IV. ANALYSIS**

19 **A. Younger Abstention**

20 To the extent that Plaintiff seeks intervention in ongoing state criminal
21 proceedings, this Court must abstain. Under principles of comity and federalism, a
22 federal court should not interfere with ongoing state criminal proceedings by granting
23 injunctive or declaratory relief except under special circumstances. Younger v. Harris,
24 401 U.S. 37 (1971); Samuels v. Mackell, 401 U.S. 66 (1971). Abstention is proper
25 regardless of whether the applicant seeks declaratory relief, injunctive relief, or
26 damages. See Mann v. Jett, 781 F.2d 1448, 1449 (9th Cir. 1986) (“When a state
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1 criminal prosecution has begun, the Younger rule directly bars a declaratory judgment
2 action” as well as a section 1983 action for declaratory relief and damages “where such
3 an action would have a substantially disruptive effect upon ongoing state criminal
4 proceedings.”); Gilbertson v. Albright, 381 F.3d 965, 984 (9th Cir. 2004) (Younger
5 abstention applies to actions for damages as it does to declaratory and injunctive relief).
6 Younger abstention is required when: (1) state judicial proceedings are pending; (2) the
7 state proceedings involve important state interests; and (3) the state proceedings afford
8 adequate opportunity to raise the constitutional issue. Middlesex Cnty. Ethics Comm. v.
9 Garden State Bar Ass’n, 457 U.S. 423, 432 (1982); Dubinka v. Judges of the Super. Ct.,
10 23 F.3d 218, 223 (9th Cir. 1994).

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12 Accordingly, the Court will abstain from interfering with Plaintiff’s ongoing state
13 proceeding.

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15 **B. Heck Bar**

16 To the extent Plaintiff’s state criminal proceedings may have concluded, Plaintiff
17 should note that state prisoners cannot challenge the fact or duration of their
18 confinement in a § 1983 action. Their sole remedy lies in habeas corpus relief. Wilkinson
19 v. Dotson, 544 U.S. 74, 78 (2005). Often referred to as the favorable termination rule or
20 the Heck bar, this exception to § 1983’s otherwise broad scope applies whenever state
21 prisoners “seek to invalidate the duration of their confinement-either directly through an
22 injunction compelling speedier release or indirectly through a judicial determination that
23 necessarily implies the unlawfulness of the State’s custody.” Wilkinson, 544 U.S. at 81.
24 “[A] state prisoner’s § 1983 action is barred (absent prior invalidation) if success in that
25 action would necessarily demonstrate the invalidity of confinement or its duration.” Id. at
26 81-82; Heck v. Humphrey, 512 U.S. 477, 489 (1994) (until and unless favorable
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1 termination of the conviction or sentence occurs, no cause of action under § 1983
2 exists).

3 If Plaintiff chooses to amend, he should note that a challenge to the fact or
4 duration of his confinement cannot be raised in a § 1983 action.

6 **V. CONCLUSION AND ORDER**

7 Plaintiff's claims are barred under Younger. The Court will grant Plaintiff an
8 opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th
9 Cir. 1987). If Plaintiff opts to amend, he must demonstrate that the alleged acts resulted
10 in a deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff must set
11 forth "sufficient factual matter . . . to 'state a claim that is plausible on its face.'" Id. at 678
12 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate that each
13 named Defendant personally participated in a deprivation of his rights. Jones v. Williams,
14 297 F.3d 930, 934 (9th Cir. 2002).

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16 Plaintiff should note that although he has been given the opportunity to amend, it
17 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th
18 Cir. 2007). Plaintiff should carefully read this Screening Order and focus his efforts on
19 curing the deficiencies set forth above.

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21 Finally, Plaintiff is advised that Local Rule 220 requires that an amended
22 complaint be complete in itself without reference to any prior pleading. As a general rule,
23 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d
24 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no
25 longer serves any function in the case. Therefore, in an amended complaint, as in an
26 original complaint, each claim and the involvement of each defendant must be
27 sufficiently alleged. The amended complaint should be clearly and boldly titled "First
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1 Amended Complaint,” refer to the appropriate case number, and be an original signed
2 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.
3 8(a). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a
4 right to relief above the speculative level” Twombly, 550 U.S. at 555 (citations
5 omitted).

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7 Accordingly, it is HEREBY ORDERED that:

8 1. The Clerk’s Office shall send Plaintiff (1) a blank civil rights complaint form
9 and (2) a copy of his Complaint, filed November 25, 2013;

10 2. Plaintiff’s Complaint is dismissed for failure to state a claim upon which
11 relief may be granted;

12 3. Plaintiff shall file an amended complaint within thirty (30) days; and

13 4. If Plaintiff fails to file an amended complaint in compliance with this order,
14 this action will be dismissed, with prejudice, for failure to state a claim and failure to
15 comply with a court order.
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18 IT IS SO ORDERED.

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20 Dated: June 24, 2014

/s/ Michael J. Seng
21 UNITED STATES MAGISTRATE JUDGE
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