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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
9

10 LAVELL DARRYL YOUNG, et. al.,

11 Plaintiffs,

12 v.

13 MICHAEL R. KIETZ, et al.,

14 Defendants.

Case No. 1:14-cv-01471-LJO-SAB

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND FOR FAILURE TO
STATE A CLAIM

(ECF No. 1)

THIRTY-DAY DEADLINE

15
16 Plaintiff Lavell Darryl Young, a state prisoner proceeding pro se and in forma pauperis in
17 this civil rights action pursuant to 42 U.S.C. § 1983, filed a complaint on September 22, 2014.

18 **I.**

19 **SCREENING REQUIREMENT**

20 The Court is required to screen complaints brought by prisoners seeking relief against a
21 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
22 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
23 legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or
24 that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
25 1915(e)(2)(B).

26 A complaint must contain “a short and plain statement of the claim showing that the
27 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
28 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere

1 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
2 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate
3 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.
4 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

5 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
6 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
7 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
8 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
9 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
10 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
11 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
12 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572
13 F.3d at 969.

14 II.

15 COMPLAINT ALLEGATIONS

16 Plaintiff is in the custody of the California Department of Corrections and Rehabilitation
17 and is housed at Salinas Valley State Prison. Plaintiff brings this action on behalf of himself and
18 his wife, Jacqueline Rena Morris against Defendants Michael R. Kietz & Associates and Sally O.
19 Moreno.

20 On April 24, 2014, Plaintiff’s wife was arrested for child abuse and endangerment.
21 (Compl. 3, ECF No. 1.) At the time of the arrest, Plaintiff was incarcerated. Plaintiff Young
22 contends that on August 26, 2014, Defendant Moreno filed charges against his wife due to
23 Plaintiff’s history of being a registered sex offender. (Id.) Plaintiff Young states that his past
24 has nothing to do with his wife’s criminal prosecution and he is being punished when he is not
25 on trial. (Id.) Plaintiff Young believes that Defendant Moreno told his wife she cannot have any
26 contact with him if she wants to keep her children. Plaintiff Young brings this action for
27 violation of the Freedom of Information Act, Discrimination, Due Process and state law claims
28 of slander, verbal assault, and defamation seeking injunctive relief and punitive damages.

1 **III.**

2 **DISCUSSION**

3 **A. Plaintiff May Not Represent His Wife in this Action**

4 Plaintiff names his wife as a plaintiff on the complaint. A non-lawyer may not represent
5 anyone but himself in court. Johns v. County of San Diego, 114 F.3d 874, 877 (9th Cir. 1997);
6 C. E. Pope Equity Trust v. United States, 818 F.2d 696, 697 (9th Cir. 1987). In some
7 circumstances a litigant may seek relief for third persons, however, the litigant must demonstrate
8 1) the litigant suffered an injury in fact; 2) that there is a close relationship between the litigant
9 and the individual who possesses the right that the litigant is asserting; and 3) there is a
10 hindrance to the individual's ability to assert his own rights. Coalition of Clergy, Lawyers, and
11 Professionals, 310 F.3d at 1163; Fleck and Associates, Inc., 471 F.3d at 1105 n.3; McCollum v.
12 California Dep't of Corrections and Rehabilitation, 647 F.3d 870, 878 (9th Cir. 2011).

13 Further, constitutional rights are personal rights and only the person subject to the
14 violation has standing to bring suit. See Whitmore v. Arkansas, 495 U.S. 149, 160 (1990). "The
15 general rule is that only the person whose [personal] rights were violated can sue to vindicate
16 those rights." Moreland v. Las Vegas Metro. Police Dept., 159 F.3d 365, 369 (9th Cir. 1998).

17 Plaintiff does not have standing to bring his wife's claims and cannot represent his wife
18 in this action.

19 **B. Supervisory Liability**

20 Plaintiff brings this action against Defendant Michael R. Kietz and Associates. The
21 Court takes judicial notice that Michael R. Kietz is the District Attorney for the County of
22 Madera. See County of Madera, District Attorney HomePage at [http://madera-](http://madera-county.com/index.php/departments-overview)
23 [county.com/index.php/departments-overview](http://madera-county.com/index.php/departments-overview) (last visited November 2, 2014).

24 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or
25 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d
26 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006);
27 Jones, 297 F.3d at 934. To state a claim, Plaintiffs must demonstrate that each defendant
28 personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 677; Simmons v.

1 Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588
2 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297 F.3d at 934.

3 Under section 1983, liability may not be imposed on supervisory personnel for the
4 actions or omissions of their subordinates under the theory of respondeat superior. Iqbal, 556
5 U.S. at 677; Simmons, 609 F.3d at 1020-21; Ewing, 588 F.3d at 1235; Jones, 297 F.3d at 934.
6 “A supervisor may be liable only if (1) he or she is personally involved in the constitutional
7 deprivation, or (2) there is ‘a sufficient causal connection between the supervisor’s wrongful
8 conduct and the constitutional violation.” Crowley v. Bannister, 734 F.3d 967, 977 (9th Cir.
9 2013) (citations omitted). Supervisors may be held liable where they “participated in or directed
10 the violations, or knew of the violations and failed to act to prevent them.” Taylor v. List, 880
11 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011);
12 Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009).

13 Plaintiff does not allege any facts from which the Court could infer that Defendant Kietz
14 participated in, directed or knew of violations and failed to act to prevent them in a violation of
15 Plaintiff’s federal rights.

16 **C. Prosecutorial Immunity**

17 Prosecutors are immune from liability under 42 U.S.C. § 1983. Imbler v. Pachtman, 424
18 U.S. 409, 427 (1976); see Olsen v. Idaho State Bd. of Medicine, 363 F.3d 916, 922 (9th
19 Cir.2004) (“Absolute immunity is generally accorded to judges and prosecutors functioning in
20 their official capacities”); Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986) (holding that
21 judges and prosecutors are immune from liability for damages under section 1983). Where a
22 prosecutor acts within his authority “ ‘in initiating a prosecution and in presenting the state’s
23 case,’ absolute immunity applies.” Ashelman, 793 F.2d at 1076 (quoting Imbler, 424 U.S. at
24 431). Defendant Moreno is entitled to absolute immunity for actions taken during the
25 prosecution of the case against Plaintiff’s wife.

26 **D. Equal Protection**

27 Plaintiff alleges discrimination which the Court construes as an equal protection claim.
28 An equal protection claim may be established by showing that the defendant intentionally

1 discriminated against the plaintiff based on the plaintiff's membership in a protected class, Lee v.
2 City of Los Angeles, 250 F.3d 668, 686 (2001); Barren v. Harrington, 152 F.3d 1193, 1194
3 (1998), or that similarly situated individuals were intentionally treated differently without a
4 rational relationship to a legitimate state purpose, Thornton v. City of St. Helens, 425 F.3d 1158,
5 1167 (2005); Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

6 Plaintiff does not allege that he was a member of a protected class or that any similarly
7 situated individuals were treated differently. Further, there are no factual allegations to infer any
8 discriminatory conduct by any named defendant. Plaintiff's conclusory statement of
9 discrimination is insufficient to state a claim.

10 **E. Due Process**

11 Without identifying how, Plaintiff also alleges that his due process rights have been
12 violated. Based upon the allegations in the complaint, the Court assumes that Plaintiff's due
13 process claim is based on his allegations that the State is attempting to take away his parental
14 rights. "It is well established that a parent has a fundamental liberty interest in the
15 companionship and society of his or her child and that the state's interference with that liberty
16 interest without due process of law is remediable under 42 U.S.C. § 1983." Lee, 250 F.3d at
17 685. However, the complaint is devoid of any factual allegations to support Plaintiff's statement
18 that the state is attempting to take away his parental rights.

19 To state a claim under section 1983, Plaintiff must demonstrate that each defendant
20 personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 677; Simmons, 609
21 F.3d at 1020-21; Ewing, 588 F.3d at 1235; Jones, 297 F.3d at 934. In other words, to state a
22 claim for relief under section 1983, Plaintiff must link each named defendant with some
23 affirmative act or omission that demonstrates a violation of Plaintiff's federal rights.

24 Plaintiff has not alleged any facts from which the Court could infer that any named
25 Defendant is attempting to terminate his parental rights. Plaintiff is advised that in amended his
26 complaint he needs to not only link the named defendants to acts that violated his federal rights,
27 but he must plead which acts are alleged to violate each federal right.

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1 **F. Freedom of Information Act**

2 Plaintiff alleges a violation of the Freedom of Information Act (“FOIA”). The FOIA is a
3 federal law that gives individuals a judicially-enforceable right to receive information from
4 federal agencies. 5 U.S.C. § 552; Lion Raisins v U.S. Dept. of Agriculture, 354 F.3d 1072, 1079
5 (9th Cir. 2004). “[T]he elements of a FOIA claim are (1) improperly (2) withheld (3) agency
6 records. Marcusse v. U.S. Dep't of Justice Office of Info. Policy, 959 F. Supp. 2d 130, 140
7 (D.D.C. 2013).

8 This action does not involve allegations that any federal agency has improperly withheld
9 records. Plaintiff fails to state a claim under the FOIA.

10 **G. Equitable Relief**

11 Plaintiff seeks a temporary restraining order and injunctive relief. “A temporary
12 restraining order is designed to preserve the status quo until there is an opportunity to hold a
13 hearing on the application for a preliminary injunction.” Whitman v. Hawaiian Tug and Barge
14 Corp./Young Bros. Ltd. Salaried Pension Plan, 27 F.Supp.2d 1225, 1228 (D. Haw. 1998). The
15 factors considered for issuing a temporary restraining order are the same as the standards for
16 issuing a preliminary injunction. Ohio Republican Party v. Brunner, 543 F.3d 357, 361 (6th Cir.
17 2008).

18 “A preliminary injunction is an extraordinary remedy never awarded as of right.” Winter
19 v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 376 (2008) (citation omitted). “A
20 court may grant a preliminary injunction only if the plaintiff establishes four elements: (1)
21 likelihood of success on the merits; (2) likelihood of suffering irreparable harm absent a
22 preliminary injunction; (3) the balance of equities tips in plaintiff’s favor; and (4) injunctive
23 relief is in the public interest.” Leigh v. Salazar, 677 F.3d 892, 896 (2012); Alliance for Wild
24 Rockies v. Cottrell, 622 F.3d 1045, 1049 (9th Cir. 2010). An injunction may only be awarded
25 upon a *clear showing* that the plaintiff is entitled to relief. Winter, 129 S. Ct. at 376 (citation
26 omitted) (emphasis added).

27 Plaintiff seeks relief to prevent the district attorney from using his past in his wife’s
28 criminal proceedings. As discussed above, Plaintiff cannot bring this action on behalf of his

1 wife. Plaintiff does not have standing to seek the relief requested.

2 Plaintiff also seeks documentation and a hearing on the foundation to take away his
3 parental rights. Plaintiff's complaint does not contain any factual allegations that any defendant
4 is attempting to take away his parental rights. Since Plaintiff has failed to state a claim showing
5 that he is entitled to relief, the request for a preliminary injunction must be denied.

6 **H. State Law Claims**

7 The California Tort Claims Act requires that a tort claim against a public entity or its
8 employees be presented to the California Victim Compensation and Government Claims Board,
9 formerly known as the State Board of Control, no more than six months after the cause of action
10 accrues. Cal. Gov't Code §§ 905.2, 910, 911.2, 945.4, 950-950.2 (West 2010). Presentation of a
11 written claim, and action on or rejection of the claim are conditions precedent to suit. State v.
12 Superior Court of Kings County (Bodde), 90 P.3d 116, 119 (Cal. 2004); Shirk v. Vista Unified
13 School District, 42 Cal.4th 201, 209 (2007). To state a tort claim against a public employee, a
14 plaintiff must allege compliance with the California Tort Claims Act. Cal. Gov't Code § 950.6;
15 Bodde, 90 P.3d at 123. “[F]ailure to allege facts demonstrating or excusing compliance with the
16 requirement subjects a complaint to general demurrer for failure to state a cause of action.”
17 Bodde, 90 P.3d at 120.

18 If Plaintiff chooses to amend his complaint he will need to allege facts sufficient to show
19 he has complied with the requirements of the California Tort Claim Act. In the paragraphs that
20 follow, the court will provide Plaintiff with the legal standards that appear to apply to the
21 California state law claims. Plaintiff should carefully review the standards and amend only those
22 claims that he believes, in good faith, are cognizable.

23 1. Defamation

24 “Defamation is an invasion of the interest in reputation” and “involves the intentional
25 publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure
26 or which causes special damage.” Smith v. Maldonado, 72 Cal.App.4th 637, 645 (1999). In the
27 context of defamation, publication means communicating to a third party who understands the
28 meaning of the defamatory statement and its application to the individual. Smith, 72 Cal.App. at

1 645. Where the words are not defamatory on their face, or are ambiguous, the plaintiff must also
2 allege extrinsic circumstances to prove the meaning or innuendo that made the statement
3 defamatory. Id. at 645-46.

4 Defamation is effected by either libel or slander. Cal. Civ. Code § 44. Slander is a false
5 and unprivileged oral publication which:

- 6 1. Charges any person with crime, or with having been indicted, convicted, or
7 punished for crime;
- 8 2. Imputes in him the present existence of an infectious, contagious, or loathsome
9 disease;
- 10 3. Tends directly to injure him in respect to his office, profession, trade or
11 business, either by imputing to him general disqualification in those respects
12 which the office or other occupation peculiarly requires, or by imputing
13 something with reference to his office, profession, trade, or business that has a
14 natural tendency to lessen its profits;
- 15 4. Imputes to him impotence or a want of chastity; or
- 16 5. Which, by natural consequence, causes actual damage.

17 Cal. Civil Code § 46.

18 “To establish a prima facie case for slander, a plaintiff must demonstrate an oral
19 publication to third persons of specified false matter that has a natural tendency to injure or that
20 causes special damage.” City of Costa Mesa v. D’Alessio Investments, LLC, 214 Cal.App.4th
21 358, 375-76 (2013) (quoting Mann v. Quality Old Time Service, Inc., 120 Cal.App.4th 90, 106
22 (2005)). Factual truth is a defense to defamation actions. City of Costa Mesa, 214 Cal.App.4th
23 at 378.

24 2. Assault

25 For an assault claim under California law, a plaintiff must show that (1) the defendant
26 threatened to touch him in a harmful or offensive manner; (2) it reasonably appeared to the
27 plaintiff that the defendant was about to carry out the threat; (3) the plaintiff did not consent to
28 the conduct; (4) the plaintiff was harmed; and (5) the defendant’s conduct was a substantial
factor in causing the harm. Tekle v. U.S., 511 F.3d 839, 855 (9th Cir. 2007) (citation omitted).

29 IV.

30 CONCLUSION AND ORDER

31 For the reasons stated, Plaintiff’s complaint does not state a cognizable claim for relief
32 for a violation of his federal rights. Plaintiff is granted leave to file an amended complaint within

1 thirty days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change
2 the nature of this suit by adding new, unrelated claims in his amended complaint. George v.
3 Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

4 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
5 each named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal
6 rights, Iqbal, 129 S. Ct. at 1948-49. “The inquiry into causation must be individualized and
7 focus on the duties and responsibilities of each individual defendant whose acts or omissions are
8 alleged to have caused a constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th
9 Cir. 1988). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a
10 right to relief above the speculative level” Twombly, 550 U.S. at 555 (citations omitted).

11 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana,
12 Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987),
13 and must be “complete in itself without reference to the prior or superseded pleading,” Local
14 Rule 220.

15 Based on the foregoing, it is HEREBY ORDERED that:

- 16 1. Plaintiff’s complaint, filed September 22, 2014, is dismissed for failure to state a
17 claim upon which relief may be granted under section 1983;
- 18 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
19 an amended complaint; and
- 20 3. If Plaintiff fails to file an amended complaint in compliance with this order, this
21 action will be dismissed, with prejudice, for failure to state a claim.

22 IT IS SO ORDERED.

23 Dated: November 7, 2014

24 
25 _____
26 UNITED STATES MAGISTRATE JUDGE
27
28