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

10 GARY RAY BETTENCOURT,

11 Plaintiff,

12 v.

13 BRIAN McCABE, et al.,

14 Defendants.

Case No. 1:17-cv-00646-DAD-SAB

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

(ECF No. 1)

THIRTY DAY DEADLINE

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16 On April 27, 2017, Plaintiff Gary Ray Bettencourt, a state prisoner proceeding pro se and
17 in forma pauperis, filed this action in the Sacramento Division of the United States District Court
18 for the Eastern District of California pursuant to 42 U.S.C. § 1983. (ECF No. 1.) On May 9,
19 2017, this action was transferred from the Sacramento Division to the Fresno Division. (ECF
20 No. 4.)

21 Plaintiff utilized the section 1983 complaint form for a civil rights action filed by
22 incarcerated individuals. However, Plaintiff is attempting to challenge proceedings involving the
23 probate of a will rather than conditions of confinement. Therefore, the Court re-designated this
24 action as a regular civil action on June 12, 2017. (ECF No. 7.)

25 **I.**

26 **SCREENING REQUIREMENT**

27 The Court is required to screen complaints brought by prisoners seeking relief against a
28 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

1 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
2 legally “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or
3 that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
4 1915(e)(2)(B).

5 A complaint must contain “a short and plain statement of the claim showing that the
6 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
7 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
9 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate
10 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.
11 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

12 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
13 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
14 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
15 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
16 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
17 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
18 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
19 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572
20 F.3d at 969.

21 II.

22 DISCUSSION

23 Plaintiff brings this action against Defendants Judge B. McCabe of the Merced County
24 Superior Court; Judge J. Kirihara of the Merced County Superior Court; Steve Griffin, executor
25 of John S. Bettencourt’s will; and Vanise Bettencourt.¹ Plaintiff states that this Court has

26 ¹ In the caption, Plaintiff also names the Estate of John Bettencourt and the executors and beneficiaries of the Estate
27 and Merced Superior Court Civil and Probate Clerks. Plaintiff also states in the complaint that the estate attorney is
28 disbarred and that Plaintiff has notified him of “breach of fiduciary or breach of trust past due.” Plaintiff must
clearly identify who are the defendants that he is bringing his claims against.

1 jurisdiction over this action pursuant to 28 U.S.C. § 1343(a), 42 U.S.C. § 1983, the Extraordinary
2 Writ Rule, and Rule 4 of the Federal Rules of Civil Procedure, and because this is a trust fund
3 collection case.

4 Plaintiff indicates that he is seeking an order to review and enforce the errors by the
5 probate court for the will and testament of John S. Bettencourt. Plaintiff alleges that he is a
6 beneficiary of the will of John S. Bettencourt and that Defendants discontinued the payments of
7 trust funds established for Plaintiff. Plaintiff contends that the trust was for \$20,000, but he only
8 received \$4,400.² Plaintiff alleges that the will was probated in Merced County Superior Court
9 on May 10, 2011, and no motions were filed after May 10, 2011.

10 Plaintiff alleges that the judges violated Plaintiff's civil and constitutional rights for
11 fiduciary fraud and that a judge violated the oath of affirmation. He alleges that the attorney of
12 record for the estate, the executor, or the Merced County Superior Court has put new dates on the
13 motions and fabricated or falsified the language of the motions. It appears that Plaintiff is
14 alleging that his petitions and pleadings were returned unfiled by the Superior Court Judges and
15 Clerks for two years. Plaintiff states that he only received 74 or 76 pages of the record from the
16 Superior Court Clerk, but she claimed she sent 82 pages. Plaintiff states that an unknown clerk
17 changed the "Superior Court Civil/Probate, Collection case number" and did not file motions for
18 telephonic appearances before Judge Kirihara. Plaintiff alleges that subpoenas were not served
19 by the Merced Superior Court to attend the ordered probate civil/collection hearing. Plaintiff
20 seeks to invoke the Federal Tort Claim Act and the Federal Jurisdiction Act over the state court's
21 gross negligence.

22 The only relief that Plaintiff seeks is damages. Plaintiff seeks to be reimbursed for the
23 trust fund payments of \$100 per month that he alleges he is entitled to for a total of \$16,400. He
24 also seeks payment for gross tort negligence of \$1,164,000.

25 Plaintiff's complaint fails to set forth any facts to state a cognizable federal claim.
26 Plaintiff sets forth the names of several individuals who it appears were involved in the probate

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28 ² In another section of the complaint, Plaintiff states that he received the last payment from the trust on July 3, 2014,
and that he is owed \$16,400 from the trust.

1 of John Bettencourt’s will, but it is unclear what claims Plaintiff is attempting to pursue in this
2 action. It is unclear if Plaintiff is challenging the state court’s decision in the probate proceeding
3 or if he is bringing claims against individuals for what they did or failed to do related to the
4 probate proceeding. The Court shall grant Plaintiff an opportunity to file an amended complaint
5 to correct the deficiencies identified in this order and he should clearly state the claims that he is
6 bringing and the defendants that he is bringing his claims against.

7 If Plaintiff cannot identify the Defendants by name, he must number the Doe Defendants
8 in the complaint, e.g., “John/Jane Doe 1,” John/Jane Doe 2,” and allege specific acts attributed to
9 each of the Doe Defendants, e.g., “John Doe 1 did X” and “John Doe 2 and 3 did Y,” so that
10 each numbered John Doe refers to a different specific person and their role in the alleged
11 violations is clear. In addition, the Court cannot order service of a Doe Defendant because the
12 United States Marshal cannot serve a Doe Defendant. Therefore, before the Court orders the
13 United States Marshal to serve a Doe Defendant, Plaintiff will be required to identify him or her
14 with enough information to locate the Defendant for service of process.

15 **A. Jurisdiction**

16 Federal courts are courts of limited jurisdiction and their power to adjudicate is limited to
17 that granted by Congress. U.S. v. Sumner, 226 F.3d 1005, 1009 (9th Cir. 2000). Pursuant to 28
18 U.S.C. § 1331, federal courts have original jurisdiction over “all civil actions arising under the
19 Constitution, laws, or treaties of the United States.” “A case ‘arises under’ federal law either
20 where federal law creates the cause of action or where the vindication of a right under state law
21 necessarily turns on some construction of federal law.” Republican Party of Guam v. Gutierrez,
22 277 F.3d 1086, 1088 (9th Cir. 2002) (internal punctuation omitted) (quoting Franchise Tax Bd.
23 v. Construction Laborers Vacation Trust, 463 U.S. 1, 8-9 (1983) (citations omitted)). “[T]he
24 presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint
25 rule,’ which provides that federal jurisdiction exists only when a federal question is presented on
26 the face of the plaintiff’s properly pleaded complaint.” Republican Party of Guam, 277 F.3d at
27 1089 (citations omitted).

28 For this action to arise under federal law, Plaintiff must establish that “federal law creates

1 the cause of action” or his “asserted right to relief depends on the resolution of a substantial
2 question of federal law.” K2 America Corp. v. Roland Oil & Gas, LLC, 653 F.3d 1024, 1029
3 (9th Cir. 2011).³

4 It is unclear what claims Plaintiff is bringing in this action and the bases for those claims.
5 If Plaintiff is seeking to bring his suit on basis of federal question jurisdiction, he must allege
6 facts to demonstrate that this action arises under federal law.

7 **B. Liability Under Section 1983**

8 Plaintiff is advised that to state a claim under section 1983, he is required to show that (1)
9 each defendant acted under color of state law and (2) each defendant deprived him of rights
10 secured by the Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185
11 (9th Cir. 2006). There is no respondeat superior liability under section 1983, and therefore, each
12 defendant is only liable for his or her own misconduct. Iqbal, 556 U.S. at 677. To state a claim,
13 Plaintiff must demonstrate that each defendant personally participated in the deprivation of his
14 rights. Jones, 297 F.3d at 934. In other words, to state a cognizable claim, Plaintiff must identify
15 the individual defendant and state the act or failure to act of that defendant that violated
16 Plaintiff’s federal rights. Plaintiff must specify the right secured by the Constitution or federal
17 law. Plaintiff must allege that each defendant acted under color of state law. To the extent that
18 Plaintiff is alleging that Judge McCabe and Judge Kiriara and the Court Clerks are liable under
19 section 1983, they may be immune from suit because of judicial immunity and quasi-judicial
20 immunity, as discussed below. Plaintiff has not alleged that Defendants Steve Griffin and
21 Vanise Bettencourt are state actors.

22 **C. Petition for Extraordinary Writ**

23 Plaintiff refers to the Extraordinary Writ Rule, which the Court construes as the
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25 ³ District courts also have original jurisdiction of all civil actions between citizens of different States in which “the
26 matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.” 28 U.S.C. § 1332(a).
27 **Error! Main Document Only.**This requires complete diversity of citizenship and the presence “of a single plaintiff
28 from the same State as a single defendant deprives the district court of original diversity jurisdiction over the entire
action.” Abrego Abrego v. The Dow Chemical Co., 443 F.3d 676, 679 (9th Cir. 2006) (citations omitted). Plaintiff
is not bringing this action based on diversity jurisdiction. If Plaintiff is a citizen of the same state as even one
defendant, there would be no diversity jurisdiction.

1 Procedure on a Petition for an Extraordinary Writ. See U.S. Supreme Court Rule 20. Rule 20 of
2 the Rules of the Supreme Court of the United States provides that, “[T]he petition must show
3 that the writ will be in aid of the [Supreme] Court’s appellate jurisdiction, that exceptional
4 circumstances warrant the exercise of the [Supreme] Court’s discretionary powers, and that
5 adequate relief cannot be obtained in any other form or from any other court.” Plaintiff has filed
6 this action in the United States District Court for the Eastern District of California, and therefore,
7 Rule 20 of the Rules of the Supreme Court of the United States is inapplicable.

8 **D. 28 U.S.C. § 1343**

9 Plaintiff alleges jurisdiction pursuant to 28 U.S.C. § 1343(a), which provides that district
10 courts have original jurisdiction of civil actions:

- 11 (1) To recover damages for injury to his person or property, or because of the
12 deprivation of any right or privilege of a citizen of the United States, by any act
13 done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
14 (2) To recover damages from any person who fails to prevent or to aid in
15 preventing any wrongs mentioned in section 1985 of Title 42 which he had
16 knowledge were about to occur and power to prevent;
17 (3) To redress the deprivation, under color of any State law, statute, ordinance,
18 regulation, custom or usage, of any right, privilege or immunity secured by the
19 Constitution of the United States or by any Act of Congress providing for equal
20 rights of citizens or of all persons within the jurisdiction of the United States;
21 (4) To recover damages or to secure equitable or other relief under any Act of
22 Congress providing for the protection of civil rights, including the right to vote.

23 28 U.S.C. § 1343(a).

24 Plaintiff does not allege that his claims are under an Act of Congress providing for the
25 protection of civil rights or under a State law, statute, ordinance, regulation custom, or usage of
26 any right, privilege, or immunity secured by the Constitution or any Act of Congress providing
27 for equal rights of citizens or persons within the jurisdiction of the United States. Plaintiff also
28 does not set forth factual allegations of a conspiracy mentioned in section 1985 of Title 42.
Plaintiff cannot make conclusory statements, but must provide factual allegations sufficient to
state a claim.

To establish a claim for conspiracy under 42 U.S.C. § 1985, a plaintiff must demonstrate
a conspiracy for the purpose of depriving another of the equal protection of the laws and an act in
furtherance of that conspiracy, causing injury to a person or property or the deprivation of a legal

1 right. Federer v. Gephardt, 363 F.3d 754, 757-58 (8th Cir. 2004). “The language requiring
2 intent to deprive [another] of equal protection, or equal privileges and immunities, means that
3 there must be some racial or perhaps otherwise class-based, invidiously discriminatory animus
4 behind the conspirator’s actions.” Id. at 758 n. 3 (quoting Griffin v. Breckenridge, 403 U.S. 88,
5 102 (1971)). “It implies that the decisionmaker . . . selected or reaffirmed a particular course of
6 action at least in part ‘because of,’ . . . its adverse effects upon an identifiable group.” Bray v.
7 Alexandria Women’s Health Clinic, 506 U.S. 263, 271-72 (1993).

8 **E. Federal Tort Claims Act**

9 Plaintiff states that he is bringing his claims under the Federal Tort Claims Act
10 (“FTCA”). The district courts have jurisdiction of “civil actions on claims against the United
11 States, for money damages, accruing on and after January 1, 1945, for injury or loss of property,
12 or personal injury or death caused by the negligent or wrongful act or omission of any employee
13 of the Government while acting within the scope of his office or employment, under
14 circumstances where the United States, if a private person, would be liable to the claimant in
15 accordance with the law of the place where the act or omission occurred.” 28 U.S.C. §
16 1346(b)(1). The FTCA waives the United States’ sovereign immunity for tort claims caused by
17 negligence on the part of government employees acting within the scope of their employment.
18 Terbush v. United States, 516 F.3d 1125, 1128 (9th Cir. 2008). The FTCA, however, includes a
19 number of exceptions to this otherwise broad waiver of sovereign immunity. Id. at 1129. Here,
20 Plaintiff has not named the United States as a defendant and has not alleged any acts or
21 omissions by federal government employees.

22 **F. Rule 4 of the Federal Rules of Civil Procedure**

23 Plaintiff states that this Court has jurisdiction pursuant to Rule 4 of the Federal Rules of
24 Civil Procedure. However, federal subject matter jurisdiction cannot be based on Rule 4 of the
25 Federal Rules of Civil Procedure. Rule 4 provides the procedures for a summons and the service
26 of a summons. See Fed. R. Civ. P. 4. Rule 4 is not a federal law and it does not create a cause of
27 action.

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1 **G. Trust Fund Collection Case**

2 Plaintiff states that the district court has jurisdiction because this is a trust fund collection
3 case. It appears that Plaintiff is alleging that the district court has jurisdiction because he is
4 seeking the collection of his trust fund. However, the fact that Plaintiff is seeking the collection
5 of a trust that he alleges he is entitled to pursuant to a will is not sufficient to create federal
6 question jurisdiction. To the extent that Plaintiff is only able to allege state law claims, state law
7 claims are insufficient to invoke federal question jurisdiction.

8 **H. Judicial Immunity**

9 Plaintiff brings this action against Judge McCabe and Judge Kirihara, who are both
10 judges at the Merced County Superior Court, for violations of Plaintiff’s civil and constitutional
11 rights and “fiduciary fraud.” Plaintiff alleges that a judge violated the oath of affirmation of the
12 United States and California Constitutions. It also appears that Plaintiff is alleging that judges
13 had returned his petitions unfiled for two years. However, Plaintiff does not describe how the
14 judge violated the oath of affirmation, what civil rights and constitutional rights the judges
15 violated, or how the judges committed “fiduciary fraud.” Plaintiff must explain what actions or
16 inactions Judge McCabe and Judge Kirihara did or failed to do that allegedly violated Plaintiff’s
17 rights. Judge McCabe and Judge Kirihara may be entitled to judicial immunity for the claims
18 against them.

19 Absolute judicial immunity is afforded to judges for acts performed by the judge that
20 relate to the judicial process. In re Castillo, 297 F.3d 940, 947 (9th Cir. 2002), as amended
21 (Sept. 6, 2002). “This immunity reflects the long-standing ‘general principle of the highest
22 importance to the proper administration of justice that a judicial officer, in exercising the
23 authority vested in him, shall be free to act upon his own convictions, without apprehension of
24 personal consequences to himself.’ ” Olsen v. Idaho State Bd. of Med., 363 F.3d 916, 922 (9th
25 Cir. 2004) (quoting Bradley v. Fisher, 13 Wall. 335, 347 (1871)). This judicial immunity
26 insulates judges from suits brought under section 1983. Olsen, 363 F.3d at 923.

27 Absolute judicial immunity insulates the judge from actions for damages due to judicial
28 acts taken within the jurisdiction of the judge’s court. Ashelman v. Pope, 793 F.2d 1072, 1075

1 (9th Cir. 1986). “Judicial immunity applies ‘however erroneous the act may have been, and
2 however injurious in its consequences it may have proved to the plaintiff.’ ” Id. (quoting
3 Cleavinger v. Saxner, 474 U.S. 193 (1985)). However a judge is not immune where he acts in
4 the clear absence of jurisdiction or for acts that are not judicial in nature. Ashelman, 793 F.2d at
5 1075. Judicial conduct falls within “clear absence of all jurisdiction,” where the judge “acted
6 with clear lack of all subject matter jurisdiction.” Stone v. Baum, 409 F. Supp. 2d 1164, 1174
7 (D. Ariz. 2005).

8 To determine if an act is judicial in nature, the court considers whether (1) the precise act
9 is a normal judicial function; (2) the events occurred in the judge’s chambers; (3) the controversy
10 centered around a case then pending before the judge; and (4) the events at issue arose directly
11 and immediately out of a confrontation with the judge in his or her official capacity. Duvall v.
12 Cty. of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001), as amended on denial of reh’g (Oct. 11,
13 2001) (quoting Meek v. County of Riverside, 183 F.3d 962, 967 (9th Cir. 1999)).

14 **I. Quasi-Judicial Immunity from Damages**

15 Plaintiff alleges that Merced County Superior Court Civil and Probate Clerks had
16 returned unfiled his petitions for two years. Plaintiff states that he only received 74 or 76 pages
17 of the record from the Superior Court Clerk, but she claimed she sent 82 pages. Plaintiff states
18 that an unknown clerk changed the “Superior Court Civil/Probate, Collection case number” and
19 did not file motions for telephonic appearances before Judge Kiriara. Plaintiff alleges that
20 subpoenas were not served by the Merced Superior Court to attend the ordered probate
21 civil/collection hearing. The court clerks may have quasi-judicial immunity from damages.

22 “Court clerks have absolute quasi-judicial immunity from damages for civil rights
23 violations when they perform tasks that are an integral part of the judicial process.” Mullis v.
24 U.S. Bankr. Court for Dist. of Nevada, 828 F.2d 1385, 1390 (9th Cir. 1987); Fixel v. United
25 States, 737 F.Supp. 593, 597 (D. Nev. 1990), aff’d sub nom. Fixel v. U.S. Dist. Court of Nevada,
26 930 F.2d 27 (9th Cir. 1991). Clerk action that is “a mistake or an act in excess of jurisdiction
27 does not abrogate judicial immunity, even if it results in ‘grave procedural errors.’ ” Mullis, 828
28 F.2d at 1390 (quoting Stump v. Sparkman, 435 U.S. 349, 359 (1978)). In Mullis, a bankruptcy

1 debtor filed an action against the bankruptcy court clerks. Mullis, 828 F.2d at 1390. The
2 plaintiff alleged denial to access of the court after the court clerks refused to accept and file an
3 amended petition in his bankruptcy action. Mullis, 828 F.2d at 1390. The court found that the
4 clerk of court and deputy clerks are the court officials through whom filing in cases is done. Id.
5 “Consequently, the clerks qualify for quasi-judicial immunity unless these acts were done in the
6 clear absence of all jurisdiction.” Id.

7 **J. Principles of Abstention Apply to Plaintiff’s Claims**

8 It appears that Plaintiff may be seeking to have this Court adjudicate a matter that is
9 being adjudicated in Merced County Superior Court. Plaintiff attaches the civil case cover sheet
10 for a civil case that he filed in Merced County Superior Court, which also includes the case
11 number of a probate action. A review of the Merced County Superior Court dockets in both the
12 civil action and probate action indicates that these actions are still pending in Merced County
13 Superior Court. See Estate of: John S. Bettencourt, No. PR000628 (Merced Sup. Ct.); Gary
14 Bettencourt v. Vanise Bettencourt, No. 15CV-01551 (Sup. Ct.).⁴ It appears that one of two
15 abstention principles articulated by the United States Supreme Court may apply to this case.

16 The Younger doctrine precludes a federal court’s intervention in ongoing state
17 proceedings. Younger v. Harris, 401 U.S. 37 (1971). Younger abstention is required when: (1)
18 state proceedings, judicial in nature, are pending; (2) the state proceedings involve important
19 state interests; and (3) the state proceedings afford adequate opportunity to raise the
20 constitutional issue. Middlesex County Ethics Comm. v. Garden State Bar Ass’n, 457 U.S. 423,
21 432 (1982); Dubinka v. Judges of the Superior Court of State of Cal. for Cty. Of Los Angeles, 23
22 F.3d 218, 223 (9th Cir. 1994) (citations omitted). The rationale of Younger applies throughout
23 the appellate proceedings, requiring that state appellate review of a state court judgment be
24 exhausted before federal court intervention is permitted. Dubinka, 23 F.3d at 223 (even if
25 criminal trials were completed at time of abstention decision, state court proceedings are still

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27 ⁴ The Court takes judicial notice of the actions filed in the Merced County Superior Court. Reyn’s Pasta Bella, LLC
28 v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006); Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir.
2001).

1 considered pending).

2 Further, once a state court proceeding has concluded, the Rooker–Feldman abstention
3 doctrine applies when the relief requested in the federal court would effectively reverse a state
4 court decision or void its ruling. The application of the Rooker–Feldman doctrine is necessarily
5 limited to “cases brought by state-court losers complaining of injuries caused by state-court
6 judgments rendered before the district court proceedings commenced and inviting district court
7 review and rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544
8 U.S. 280, 284 (2005). However, the Rooker-Feldman doctrine encompasses claims that were not
9 only actually litigated, but also those that are “inextricably intertwined” with the adjudication by
10 a state court. Id. at 286 (citation omitted).

11 **K. Leave to Amend**

12 Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to amend shall be freely
13 given when justice so requires. Fed. R. Civ. P. 15(a)(2). In determining whether to grant leave
14 to amend, the court considers five factors: “(1) bad faith; (2) undue delay; (3) prejudice to the
15 opposing party; (4) futility of amendment; and (5) whether the plaintiff has previously amended
16 his complaint.” Nunes v. Ashcroft, 375 F.3d 805, 808 (9th Cir. 2004).

17 As Plaintiff is proceeding pro se in this action, the Court shall provide him with a final
18 opportunity to correct the deficiencies of his claims.

19 **III.**

20 **CONCLUSION AND ORDER**

21 Plaintiff’s complaint fails to state a cognizable claim for relief under federal law. The
22 Court will provide Plaintiff with the opportunity to file a first amended complaint curing the
23 deficiencies identified by the Court in this order. Akhtar v. Mesa, 698 F.3d 1202, 1213 (9th Cir.
24 2012).

25 If Plaintiff decides to file a first amended complaint, he is advised that he may not change
26 the nature of this suit by adding new, unrelated claims in his amended complaint. George v.
27 Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints). Plaintiff’s first amended
28 complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each named defendant did

1 that led to the deprivation of Plaintiff’s constitutional or other federal rights, Iqbal, 556 U.S. at
2 678-79. “The inquiry into causation must be individualized and focus on the duties and
3 responsibilities of each individual defendant whose acts or omissions are alleged to have caused
4 a constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although
5 accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the
6 speculative level” Twombly, 550 U.S. at 555 (citations omitted).

7 Finally, an amended complaint supersedes the original complaint, Lacey v. Maricopa
8 County, 693 F.3d 896, 927 (9th Cir. 2012); Valdez-Lopez v. Chertoff, 656 F.3d 851, 857 (9th
9 Cir. 2011), and must be “complete in itself without reference to the prior or superseded
10 pleading,” Local Rule 220.

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

- 12 1. Plaintiff’s complaint, filed April 27, 2017, is DISMISSED with leave to amend;
- 13 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file a
14 first amended complaint curing the deficiencies identified by the Court in this
15 order, and
- 16 3. If Plaintiff fails to comply with this order, this action will be dismissed for failure
17 to state a claim.

18 IT IS SO ORDERED.

19 Dated: July 24, 2017

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21 _____
22 UNITED STATES MAGISTRATE JUDGE
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