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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANDREW NORRIS,

 Plaintiff,

 v.

GLENDA ALLEN HILL, et al.,

 Defendants.

Case No. 1:18-cv-00471-LJO-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING ACTION
WITHOUT LEAVE TO AMEND FOR
FAILURE TO STATE A CLAIM

(ECF No. 1)

OBJECTIONS DUE WITHIN TWENTY-
ONE DAYS

Plaintiff Andrew Norris, an inmate in the custody of the Fresno County Jail, is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff’s complaint, filed April 5, 2018.

I.
SCREENING REQUIREMENT

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

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

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

17 III.

18 DISCUSSION

19 Plaintiff brings this action against California Superior Court Judge Glenda Allen Hill,
20 District Attorney Lisa Smitcamp, and Public Defender Elizabeth Diaz based upon the
21 prosecution of a criminal action in which he was accused of inflicting corporal injury on a spouse
22 in violation of state law. (Compl., ECF No. 1.) Plaintiff fails to state a cognizable claim against
23 any named defendant. For the reasons discussed below, the Court recommends that the
24 complaint be dismissed without leave to amend.

25 A. Judicial Immunity

26 Plaintiff alleges that Judge Glenda Allen Hill does not have an oath of affirmance to
27 support the Constitution. However, the California Constitution provides that all public officers,
28 including judicial officers, shall take an oath of affirmance before entering into their respective

1 duties. Cal. Const. art. XX, § 3. This is the only oath required before an employee enters into a
2 public office. Id. Plaintiff cannot state a claim against Judge Allen Hill based upon actions that
3 were taken in his criminal proceedings.

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

12 Absolute judicial immunity insulates the judge from actions for damages due to judicial
13 acts taken within the jurisdiction of the judge’s court. Ashelman v. Pope, 793 F.2d 1072, 1075
14 (9th Cir. 1986). “Judicial immunity applies ‘however erroneous the act may have been, and
15 however injurious in its consequences it may have proved to the plaintiff.’ ” Id. (quoting
16 Cleavinger v. Saxner, 474 U.S. 193 (1985)). However, a judge is not immune where he acts in
17 the clear absence of jurisdiction or for acts that are not judicial in nature. Ashelman, 793 F.2d at
18 1075. Judicial conduct falls within “clear absence of all jurisdiction,” where the judge “acted
19 with clear lack of all subject matter jurisdiction.” Stone v. Baum, 409 F. Supp. 2d 1164, 1174
20 (D. Ariz. 2005).

21 To determine if an act is judicial in nature, the court considers whether (1) the precise act
22 is a normal judicial function; (2) the events occurred in the judge’s chambers; (3) the controversy
23 centered around a case then pending before the judge; and (4) the events at issue arose directly
24 and immediately out of a confrontation with the judge in his or her official capacity. Duvall v.
25 Cty. of Kitsap, 260 F.3d 1124, 1133 (9th Cir. 2001), as amended on denial of reh’g (Oct. 11,
26 2001) (quoting Meek v. County of Riverside, 183 F.3d 962, 967 (9th Cir. 1999)).

27 Plaintiff’s allegation that Judge Allen Hill does not have an oath to support the
28 Constitution is insufficient to state a plausible claim for a violation of section 1983. The Court

1 recommends that the complaint be dismissed as to Judge Allen Hill without leave to amend as
2 she is entitled to absolute immunity for actions taken in her judicial role in presiding over
3 Plaintiff's criminal action.

4 **B. Prosecutorial Immunity**

5 Plaintiff alleges that District Attorney Lisa Smitcamp brought false claims and forged the
6 criminal complaint for the complaining witness.

7 To state a claim under section 1983, Plaintiff is required to show that (1) each defendant
8 acted under color of state law and (2) each defendant deprived him of rights secured by the
9 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
10 2006). There is no respondeat superior liability under section 1983, and therefore, each
11 defendant is only liable for his or her own misconduct. Iqbal, 556 U.S. at 677. To state a claim,
12 Plaintiff must demonstrate that each defendant personally participated in the deprivation of his
13 rights. Jones, 297 F.3d at 934.

14 Although Plaintiff alleges that the district attorney brought false claims and forged the
15 complaint by the witness, the complaint lacks any factual allegations by which the Court could
16 reasonably infer that the district attorney is liable for the conduct alleged. Iqbal, 556 U.S. at 678-
17 79.

18 Further, prosecutors are immune from liability under 42 U.S.C. § 1983 for actions taken
19 in their official capacity. See Imbler v. Pachtman, 424 U.S. 409, 427 (1976); see also Olsen, 363
20 F.3d at 922 (“Absolute immunity is generally accorded to judges and prosecutors functioning in
21 their official capacities”); Ashelman, 793 F.2d at 1075 (holding that judges and prosecutors are
22 immune from liability for damages under section 1983). Where a prosecutor acts within her
23 authority “ ‘in initiating a prosecution and in presenting the state’s case,’ absolute immunity
24 applies.” Ashelman, 793 F.2d at 1076 (quoting Imbler, 424 U.S. at 431).

25 Plaintiff's allegations that the claims brought against him were false is insufficient to
26 state a claim against the district attorney for prosecuting the charges against him. The decision
27 by the district attorney to file charges against a criminal defendant falls within those actions that
28 are entitled to immunity.

1 Plaintiff's allegations are insufficient to state a cognizable claim against the district
2 attorney. The Court recommends that the claims against Lisa Smitcamp be dismissed without
3 leave to amend.

4 **C. The Public Defender is Not a State Actor**

5 Plaintiff also alleges that his public defender provided ineffective assistance of counsel
6 by persuading him to waive a jury trial. As discussed above, to state a claim under section 1983,
7 Plaintiff must show that each defendant acted under color of state law. Long, 442 F.3d at 1185.
8 It is well established that court appointed attorneys are not state actors. Polk v. Dodson, 454
9 U.S. 312, 325 (1981) (a court appointed attorney representing an indigent client does not act
10 under color of state law when performing the traditional functions of a lawyer); Miranda v. Clark
11 County of Nevada, 319 F.3d 465, 468 (9th Cir. 2003) (upholding dismissal of complaint on basis
12 that public defender was not acting on behalf of county for purposes of section 1983 in
13 representing plaintiff's interests); Hall v. Quillen, 631 F.2d 1154, 1156 (4th Cir. 1980) (court
14 appointed attorney representing plaintiff in involuntary commitment proceedings is not a state
15 actor); Harkins v. Eldredge, 505 F.2d 802, 805 (8th Cir. 1974) (the conduct of an attorney,
16 whether retained or appointed, does not constitute action under color of state law).

17 Plaintiff cannot state a claim against his public defender under section 1983. The Court
18 recommends that the claims against Liz Gonzalez be dismissed for failure to state a claim.

19 **IV.**

20 **CONCLUSION AND RECOMMENDATION**

21 Plaintiff's complaint fails to state a cognizable claim for a violation of his federal rights
22 against any named defendant. Based upon the allegations in Plaintiff's complaint, the Court is
23 persuaded that Plaintiff is unable to allege any additional facts that would support a claim that
24 any of the named defendants violated his constitutional rights and further amendment would be
25 futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may not
26 deny leave to amend when amendment would be futile.") Based on the nature of the deficiencies
27 at issue, the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d
28 1122, 1130 (9th. Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

1 Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's complaint, filed April 5,
2 2018, be DISMISSED without leave to amend.

3 This findings and recommendations is submitted to the district judge assigned to this
4 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within twenty-
5 one (21) days of service of this recommendation, Plaintiff may file written objections to this
6 findings and recommendations with the Court. Such a document should be captioned
7 "Objections to Magistrate Judge's Findings and Recommendations." The district judge will
8 review the magistrate judge's findings and recommendations pursuant to 28 U.S.C. §
9 636(b)(1)(C). Plaintiff is advised that failure to file objections within the specified time may
10 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
11 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

12 IT IS SO ORDERED.

13
14 Dated: April 10, 2018



UNITED STATES MAGISTRATE JUDGE