

1 proceed in forma pauperis. 28 U.S.C § 1915(e)(2). Plaintiff's complaint, or any portion thereof, is
2 subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may
3 be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28
4 U.S.C. §§ 1915A(b); 1915(e)(2)(B)(ii).

5 To survive screening, Plaintiff's claims must be facially plausible, which requires sufficient
6 factual detail to allow the Court to reasonably infer that each named defendant is liable for the
7 misconduct alleged. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation marks omitted). While
8 a plaintiff's allegations are taken as true, courts "are not required to indulge unwarranted
9 inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation
10 marks and citation omitted).

11 **II. Plaintiff's Allegations**

12 In this case, Plaintiff is suing Madera County District Attorney Thackery ("DA Thackery")
13 and Madera County District Attorney Peterson ("DA Peterson") for violation of his speedy trial
14 rights under the Sixth Amendment and due process rights under the Fifth Amendment. Plaintiff
15 alleges that he requested a speedy trial in his state court criminal proceeding and, on the day his
16 trial was scheduled to start, DA Thackery dropped the charges pending against Plaintiff and refiled
17 new charges. Plaintiff was not released and was held in the courtroom. Plaintiff alleges that DA
18 Thackery's actions had adverse effects on Plaintiff's case by negatively impacted the memory of
19 one of his defense witnesses who had brain cancer. Plaintiff additionally alleges that DA Thackery
20 chose witnesses for the prosecution who all "worked of[f]" cases, were granted immunity, or lied
21 under oath. Plaintiff likewise alleges that his right to a speedy trial was "denied" by DA Peterson,
22 which again negatively impacted the memory of Plaintiff's defense witness who had brain cancer.
23 Plaintiff additionally contends that DA Peterson allowed witnesses take the stand and lie under
24 oath.

25 Plaintiff alleges that the actions of DA Thackery and DA Peterson caused Plaintiff to suffer
26 a mental breakdown and enter a plea, which Plaintiff alleges he does not remember doing. (Doc.
27 No. 1 at 3-4.) Plaintiff requests free psychological treatment and \$500,000.00 in damages. (Doc.
28 No. 1 at 6.)

1 **II. Discussion**

2 **A. Prosecutorial Immunity**

3 As noted above, the sole defendants in this action are Madera County District Attorneys.
4 However, prosecutors acting in their official capacities are immune from liability under section
5 1983. *See Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 922 (9th Cir. 2004) (“Absolute
6 immunity is generally accorded to judges and prosecutors functioning in their official capacities”);
7 *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (holding that judges and prosecutors are
8 immune from liability for damages under section 1983). State prosecutors are absolutely immune
9 when performing functions “intimately associated with the judicial phase of the criminal process.”
10 *Imbler v. Pachtman*, 424 U.S. 409, 430, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976). “[I]n initiating a
11 prosecution and in presenting the State’s case, [a] prosecutor is immune from a civil suit for
12 damages under s 1983.” Id.

13 The allegations at issue against DA Thackery and DA Peterson relate to Plaintiff’s criminal
14 prosecution in state court and arise entirely out of acts performed in their official capacities as
15 prosecutors. Thus, Plaintiff’s claims are barred by prosecutorial immunity and should be dismissed.
16 As a result, Plaintiff’s application to proceed in forma pauperis should likewise be denied as moot.

17 **III. Conclusion and Recommendation**

18 For the reasons set forth above, IT IS HEREBY RECOMMENDED as follows:

- 19 1. Plaintiff’s complaint (Doc. No. 1) be dismissed with prejudice and without leave to
20 amend; and
21 2. Plaintiff’s application to proceed *in forma pauperis* (Doc. No. 1) be denied as moot.

22 These findings and recommendations will be submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
24 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
25 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
26 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
27 specified time may result in the waiver of the “right to challenge the magistrate’s factual findings”
28 on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923

1 F.2d 1391, 1394 (9th Cir. 1991)).

2

3 IT IS SO ORDERED.

4

Dated: March 7, 2019

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28