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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LEDWIN Q. DEL ROSARIO,

Plaintiff,

v.

SUPERIOR COURT OF COUNTY OF
LOS ANGELES, *et al.*,

Defendants.

Case No. 1:20-cv-0512-BAM (PC)

ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE TO
ACTION

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO STATE A CLAIM

FOURTEEN-DAY DEADLINE

Plaintiff Ledwin Q. Del Rosario (“Plaintiff”) is a state prisoner appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, filed on April 10, 2020, was screened and Plaintiff was granted leave to amend. (ECF No. 1.) Plaintiff’s first amended complaint, filed on November 16, 2020, is currently before the Court for screening. (ECF No. 11.)

I. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary

1 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b).

2 A complaint must contain “a short and plain statement of the claim showing that the
3 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
4 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
5 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
6 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken
7 as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart Stores,
8 Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

9 To survive screening, Plaintiff’s claims must be facially plausible, which requires
10 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
11 for the misconduct alleged. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss v. U.S.
12 Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted
13 unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
14 plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks omitted); Moss, 572 F.3d at 969.

15 II. Allegations in Complaint

16 Plaintiff is currently housed in California Correctional Institution at Tehachapi, California
17 (“Tehachapi”) The events in the complaint are alleged to have occurred while Plaintiff was housed
18 at Tehachapi. Plaintiff names the following defendants: (1) Jerry E. Powers, Chief Probation
19 Officer, Superior Court of Los Angeles County, (2) Phach Ngo, defense counsel, (3) Catherine
20 Mariano, Deputy District Attorney, (4) Hon Daviann L. Mitchell, Judge Superior Court of Los
21 Angeles County, and (5) Mr. Cates (Warden), of Tehachapi.

22 Plaintiff alleges violations of access to the courts, due process, and cruel and unusual
23 punishment. All of Plaintiff’s allegations center around his conviction and proceedings in which
24 he plead guilty and was sentenced He alleges his counsel threatened him and Plaintiff was
25 scared. He was convicted of being a three striker when he was not. He alleges prosecutorial
26 misconduct in the plea deal and charging Plaintiff with a serious violent crime. Judge Mitchell
27 knew the charges were not serious and allowed them to proceed. Plaintiff alleges that Warden
28 Cates knows that there are many incarcerated inmates who are wrongfully convicted in prison.

1 Plaintiff complains that this “privacy information” has not be submitted to Plaintiff’s central file.¹

2 **III. Discussion**

3 Plaintiff’s complaint fails to state a cognizable claim for relief.

4 **A. Plaintiff Cannot Challenge the Duration of Confinement in a § 1983 Action**

5 Plaintiff appears to challenge his conviction. “Federal law opens two main avenues to
6 relief on complaints related to imprisonment: a petition for writ of habeas corpus, 28 U.S.C. §
7 2254, and a complaint under ... 42 U.S.C. § 1983.” Muhammad v. Close, 540 U.S. 749, 750
8 (2004) (per curiam). “Challenges to the validity of any confinement or to particulars affecting its
9 duration are the province of habeas corpus; request for relief turning on the circumstances of
10 confinement may be presented in a § 1983 action.” Id. (internal citation omitted). Here, plaintiff’s
11 claim relates to the length of his confinement or proceedings in his underlying conviction.
12 Accordingly, his sole federal remedy is by way of a writ of habeas corpus. Preiser v. Rodriguez,
13 411 U.S. 574, 489 (1973) (“Release from custody is not an available remedy under the Civil
14 Rights Act”); Young v. Kenny, 907 F.2d 874, 875 (9th Cir. 1989) (“Where prisoner challenges
15 the fact or duration of his confinement, his sole federal remedy is a writ of habeas corpus.”).
16 “[T]o the extent plaintiff challenges his credit calculation and overall length of confinement, such
17 a claim fails in a § 1983 case as a matter of law, unless he was able to have the credit
18 determination overturned through a habeas action first.” Clinton v. Calif. Dep’t of Corr., No. 05-
19 cv-1600 LKK CMK P, 2013 WL 5718739 at *10 (E.D. Cal. Oct. 18, 2013), reversed in part on
20 other grounds by Clinton v. Cooper, 781 Fed.Appx. 582 (9th Cir. 2019).

21 Further, to the extent Plaintiff is seeking damages for an allegedly unconstitutional
22 conviction or imprisonment, “a § 1983 plaintiff must prove that the conviction or sentence has
23 been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal
24 authorized to make such determination, or called into question by a federal court’s issuance of a

25 _____
26 ¹ It is unclear from the Exhibits attached to the complaint when Plaintiff was convicted. He has
27 attached two documents entitled “Legal Status Summary,” neither of which have Plaintiff’s name
28 on the forms. The attached Exhibit response to 602 appeal states the Plaintiff Del Rosario was
convicted and sentenced to 15 years to life for sexual abuse of a child and continuous sexual abuse
of a child, which are considered to be violent offenses under California’s Penal Code.

1 writ of habeas corpus, 28 U.S.C. § 2254.” Heck v. Humphrey, 512 U.S. 477, 487-88 (1994). “A
2 claim for damages bearing that relationship to a conviction or sentence that has not been so
3 invalidated is not cognizable under § 1983.” Id. at 488. Despite being provided relevant pleading
4 and legal standards, Plaintiff has been unable to cure this deficiency. Leave to amend is not
5 warranted.

6 **B. Supervisory Liability**

7 Plaintiff names Warden Cates in his role as Warden.

8 In general, Plaintiff may not hold a defendant liable solely based upon their supervisory
9 positions. Liability may not be imposed on supervisory personnel for the actions or omissions of
10 their subordinates under the theory of respondeat superior. Iqbal, 556 U.S. at 676–77; Simmons v.
11 Navajo Cty., Ariz., 609 F.3d 1011, 1020–21 (9th Cir. 2010). Supervisors may be held liable only
12 if they “participated in or directed the violations, or knew of the violations and failed to act to
13 prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); Corales v. Bennett, 567 F.3d
14 554, 570 (9th Cir. 2009). Plaintiff may also allege the supervisor “implemented a policy so
15 deficient that the policy ‘itself is a repudiation of constitutional rights’ and is ‘the moving force of
16 the constitutional violation.’ ” Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal
17 citations omitted). Despite being provided relevant pleading and legal standards, Plaintiff has
18 been unable to cure this deficiency. Leave to amend is not warranted.

19 **C. Judicial Immunity**

20 Plaintiff is attempting to bring suit against Los Angeles County Superior Court Judge
21 Mitchell based on judicial rulings in Plaintiff’s criminal case. However, absolute immunity is
22 generally accorded to judges functioning in their official capacities. See Olsen v. Idaho State Bd.
23 of Med., 363 F.3d 916, 922 (9th Cir.2004). “Few doctrines were more solidly established at
24 common law than the immunity of judges from liability for damages for acts committed within
25 their judicial jurisdiction.” Pierson v. Ray, 386 U.S. 547, 553–54 (1967). Judicial immunity “is an
26 immunity from suit, not just from the ultimate assessment of damages.” Mireles v. Waco, 502
27 U.S. 9, 11 (1991); see also Stump v. Sparkman, 435 U.S. 349, 356 (1978) (“A judge will not be
28 deprived of immunity because the action he took was in error, was done maliciously, or was in

1 excess of his authority.”). Accordingly, Los Angeles County Superior Court Judge Mitchell is
2 immune from liability arising from her judicial rulings. Plaintiff cannot cure this deficiency.

3 **D. Appointed Attorney**

4 Insofar as Plaintiff is attempting to bring a claim under Section 1983 against the attorney
5 assigned to represent him, Defendant Ngo, he may not do so. To state a claim under Section 1983,
6 Plaintiff must allege a deprivation of a right secured by the Constitution and laws of the United
7 States “by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988)
8 (citations omitted). Attorneys do not act under color of state law when they perform “a lawyer's
9 traditional functions as counsel to a defendant in a criminal proceeding.” Polk Cty. v. Dodson,
10 454 U.S. 312, 325 (1981) (“[A] public defender does not act under color of state law when
11 performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding.”);
12 Szjarto v. Legeman, 466 F.2d 864 (9th Cir. 1972) (Attorney, whether retained or appointed, does
13 not act “under color of state law” pursuant to § 1983). Accordingly, Plaintiff cannot state a
14 cognizable Section 1983 claim against Defendant Ngo, defense counsel representing Plaintiff in a
15 criminal proceeding. Plaintiff cannot cure this deficiency.

16 **E. Criminal Charges and Prosecutorial Immunity**

17 Plaintiff appears to allege that deputy district attorney Mariano is liable for criminally
18 prosecuting Plaintiff.

19 Plaintiff's claims against Defendant Mariano are for actions done in connection with the
20 criminal prosecution of Plaintiff and, therefore, Defendant Mariano, and any other prosecutor, is
21 entitled to absolute prosecutorial immunity. See Imbler v. Pachtman, 424 U.S. 409, 430 (1976) (A
22 prosecutor is entitled to absolute immunity from a Section 1983 action for damages when he or
23 she performs a function that is “intimately associated with the judicial phase of the criminal
24 process.”); Forte v. Merced Cty., No. 1:15-CV-0147 KJM-BAM, 2016 WL 159217, at *12–13
25 (E.D. Cal. Jan. 13, 2016) (“prosecutorial immunity protects eligible government officials when
26 they are acting pursuant to their official role as advocate for the state”), report and
27 recommendation adopted, No. 1:15-CV-0147-KJM-BAM, 2016 WL 739798 (E.D. Cal. Feb. 25,
28 2016).

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IV. Conclusion and Order

Plaintiff’s first amended complaint fails to state a cognizable Section 1983 claim for relief. Despite being provided with relevant pleading and legal standards, Plaintiff has been unable to cure the deficiencies in his complaint by amendment, and thus further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a District Judge to this action.

Furthermore, IT IS HEREBY RECOMMENDED that this action be dismissed based on Plaintiff’s failure to state a cognizable claim upon which relief may be granted.

These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: November 18, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE