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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GEORGE SCOTT,
Plaintiff,
v.
DA OFFICE STANSILAUS COUNTY,
Defendant.

Case No. 1:22-cv-00774-BAM
**ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE**
**FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION**
(Doc. 8)
FOURTEEN-DAY DEADLINE

Plaintiff George Scott (“Plaintiff”), a county jail inmate proceeding pro se and *in forma pauperis*, initiated this civil rights action pursuant to 42 U.S.C. § 1983 on June 24, 2022. (Doc. 1.)

On August 8, 2022, the Court screened Plaintiff’s complaint and granted him leave to amend within thirty (30) days of service of the Court’s order. (Doc. 8.) Plaintiff was expressly warned that if he failed to file an amended complaint in compliance with the Court’s order, then the Court would recommend dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim. (*Id.*) The deadline for Plaintiff to file his amended complaint has passed and Plaintiff has not complied with the Court’s order. The Court therefore will recommend dismissal of this action for failure to state a claim and failure to obey a court

1 order.

2 **I. Failure to State a Claim**

3 **A. Screening Requirement and Standard**

4 The Court is required to screen complaints brought by prisoners seeking relief against a
5 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. §
6 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or
7 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
8 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b);
9 1915(e)(2)(B)(ii).

10 A complaint must contain “a short and plain statement of the claim showing that the
11 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
12 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
14 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as
15 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*,
16 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

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

23 **B. Plaintiff’s Allegations**

24 Plaintiff is currently housed at the Stanislaus County Jail. He appears to bring suit
25 against the District Attorney’s Office of Stanislaus County and District Attorney Monteneno and
26 claims double jeopardy on a criminal case. (*See generally* Doc. 1.) Plaintiff alleges: “In 2018 I
27 did time for the D.V [illegible] violation. They are trying to send me to prison for the D.V
28 [illegible] violation in 2022.” (Doc. 1 at 3.) Plaintiff identifies injuries to include mental agony,

1 emotional distress, pain and suffering, and lost wages. He seeks \$250,000 “for the 120 days for
2 pain & suffering, mental agony, lost wages, counseling.” (*Id.* at 4.)

3 C. Discussion

4 1. Federal Rule of Civil Procedure 8

5 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and
6 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a).
7 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause
8 of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678
9 (citation omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a
10 claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S.
11 at 570, 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are
12 not. *Id.*; *see also Twombly*, 550 U.S. at 556–557.

13 Although Plaintiff’s complaint is short, it is not a plain statement of his claims. At a
14 basic level, Plaintiff’s complaint fails to state what happened, when it happened, and who was
15 involved. Plaintiff’s conclusory statements are not sufficient. Plaintiff’s complaint also is
16 partially illegible.

17 2. Section 1983 – Linkage Requirement

18 The Civil Rights Act under which this action presumptively was filed provides:

19 Every person who, under color of [state law] ... subjects, or causes to be subjected,
20 any citizen of the United States ... to the deprivation of any rights, privileges, or
21 immunities secured by the Constitution ... shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress.

22 42 U.S.C. § 1983.

23 The statute plainly requires that there be an actual connection or link between the actions
24 of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See Monell v.*
25 *Dep’t of Soc. Servs.*, 436 U.S. 658, (1978); *Rizzo v. Goode*, 423 U.S. 362, (1976). The Ninth
26 Circuit has held that “[a] person ‘subjects another to the deprivation of a constitutional right,
27 within the meaning of section 1983, if he does an affirmative act, participates in another’s
28 affirmative acts or omits to perform an act which he is legally required to do that causes the

1 deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

2 Here, Plaintiff fails to link any defendant to alleged wrongful conduct. In order to state a
3 claim for relief under section 1983, Plaintiff must link each defendant with some affirmative act
4 or omission demonstrating a violation of Plaintiff’s federal rights.

5 3. Prosecutorial Immunity

6 To the extent Plaintiff is attempting to bring suit against District Attorney Montenegro,
7 this defendant may be immune from suit. “A state prosecuting attorney enjoys absolute
8 immunity from liability under § 1983 for his conduct in ‘pursuing a criminal prosecution’ insofar
9 as he acts within his role as an ‘advocate for the State’ and his actions are ‘intimately associated
10 with the judicial phase of the criminal process.’” *Cousins v. Lockyer*, 568 F.3d 1063, 1068 (9th
11 Cir. 2009); *see also Lacey v. Maricopa Cty.*, 693 F.3d 896, 912 (9th Cir.2012) (“Prosecutors
12 performing their official prosecutorial functions are entitled to absolute immunity against
13 constitutional torts.”). Therefore, Defendant Montenegro would be entitled to prosecutorial
14 immunity for actions associated with Plaintiff’s criminal prosecution.

15 Further, Plaintiff brings suit against the District Attorney’s Office itself, but he does not
16 make any allegations specifically against the Office. To the extent Plaintiff intends to hold the
17 Office responsible for the district attorney’s conduct as a prosecutor, he cannot do so. “There is
18 no respondeat superior liability under section 1983.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th
19 Cir. 1989).

20 4. Younger Abstention

21 Although not entirely clear, Plaintiff may be attempting to challenge ongoing criminal
22 proceedings in Stanislaus County. However, any such claim is barred under the doctrine of
23 *Younger v. Harris*, 401 U.S. 37 (1971). The *Younger* doctrine “prevents a federal court in most
24 circumstances from directly interfering with ongoing criminal proceedings in state court.” *Jones*
25 *v. Buckman*, No. 2:18-cv-0054-EFB P, 2019 WL 1227921, at *2 (E.D. Cal. Mar. 15, 2019).
26 “Further, the *Younger* abstention doctrine bars requests for declaratory and monetary relief for
27 constitutional injuries arising out of a plaintiff’s ongoing state criminal prosecution.” *Id.*, citing
28 *Mann v. Jett*, 781 F.2d 1448, 1449 (9th Cir. 1986).

1 5. *Heck* Bar

2 It has long been established that state prisoners cannot challenge the fact or duration of
3 their confinement in a section 1983 action and their sole remedy lies in habeas corpus relief.
4 *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). Often referred to as the favorable termination rule
5 or the *Heck* bar, this exception to § 1983’s otherwise broad scope applies whenever state
6 prisoners “seek to invalidate the duration of their confinement—either directly through an
7 injunction compelling speedier release or indirectly through a judicial determination that
8 necessarily implies the unlawfulness of the State’s custody.” *Wilkinson*, 544 U.S. at 81; *Heck v.*
9 *Humphrey*, 512 U.S. 477, 482, 486–87 (1994); *Edwards v. Balisok*, 520 U.S. 641, 644 (1997).
10 Thus, “a state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief
11 sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct
12 leading to conviction or internal prison proceedings)—if success in that action would necessarily
13 demonstrate the invalidity of confinement or its duration.” *Id.* at 81–82.

14 Plaintiff’s damages allegations expressly implicate the validity of his confinement.
15 Plaintiff may not pursue § 1983 damages for his claims until Plaintiff can prove “that the
16 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
17 invalid by a state tribunal authorized to make such determination, or called into question by a
18 federal court’s issuance of a writ of habeas corpus.” *Heck*, 512 U.S. at 487.

19 6. Habeas Corpus

20 To the extent that Plaintiff is attempting to challenge the validity of his conviction, the
21 duration of conviction, or his incarceration, the exclusive method for asserting that challenge is
22 by filing a petition for writ of habeas corpus. As stated above, state prisoners cannot challenge
23 the fact or duration of their confinement in a § 1983 action, and their sole remedy lies in habeas
24 corpus relief. *Wilkinson*, 544 U.S. at 78 (“[A] prisoner in state custody cannot use a § 1983
25 action to challenge the fact or duration of his confinement. He must seek federal habeas corpus
26 relief (or appropriate state relief) instead.”).

27 Plaintiff also claims a violation of the Double Jeopardy Clause. The Double Jeopardy
28 Clause precludes “a second prosecution for the same offense,” and prevents “the State from

1 ‘punishing twice, or attempting a second time to punish criminally, for the same offense.’”
2 *Kansas v. Hendricks*, 521 U.S. 346, 369, (1997), quoting *Witte v. United States*, 515 U.S. 389,
3 396 (1995). To the extent Plaintiff is attempting to plead a double jeopardy claim, his federal
4 legal remedy lies in a writ of habeas corpus. *Sekona v. Trujillo*, No. 1:19-cv-0399-AWI-BAM
5 (PC), 2019 WL 7290493, at *6 (E.D. Cal. Dec. 30, 2019), report and recommendation adopted,
6 No. 1:19-cv-00399-AWI-BAM (PC), 2020 WL 7186099 (E.D. Cal. Dec. 7, 2020).

7 **II. Failure to Obey Court Order and Failure to Prosecute**

8 **A. Legal Standard**

9 Local Rule 110 provides that “[f]ailure . . . of a party to comply with these Rules or with
10 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
11 within the inherent power of the Court.” District courts have the inherent power to control their
12 dockets and “[i]n the exercise of that power they may impose sanctions including, where
13 appropriate, . . . dismissal.” *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
14 court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action,
15 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
16 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
17 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
18 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
19 (dismissal for failure to comply with court order).

20 In determining whether to dismiss an action, the Court must consider several factors: (1)
21 the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its
22 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
23 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
24 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

25 **B. Discussion**

26 Here, Plaintiff’s amended complaint is overdue. The action cannot proceed without
27 Plaintiff’s cooperation and compliance with the Court’s order. Moreover, the Court cannot hold
28 this case in abeyance awaiting compliance by Plaintiff. The Court additionally cannot effectively

1 manage its docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first
2 and second factors weigh in favor of dismissal.

3 The third factor, risk of prejudice to the defendant, also weighs in favor of dismissal, as a
4 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
5 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs
6 against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*,
7 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
8 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
9 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Prods.*
10 *Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

11 Finally, the Court’s warning to a party that failure to obey the Court’s order will result in
12 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
13 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s August 8, 2022 screening
14 order expressly warned Plaintiff that his failure to comply would result in a recommendation for
15 dismissal of this action. (Doc. 8 at 6-7.) Plaintiff had adequate warning that dismissal could
16 result from his noncompliance. Additionally, at this stage in the proceedings there is little
17 available to the Court that would constitute a satisfactory lesser sanction while protecting the
18 Court from further unnecessary expenditure of its scarce resources. Plaintiff’s *in forma pauperis*
19 status in this action indicates that monetary sanctions are of little use, and the preclusion of
20 evidence or witnesses is likely to have no effect given that Plaintiff has ceased litigating his case.

21 **III. Conclusion and Recommendation**

22 For the reasons discussed, Plaintiff’s amended complaint fails to comply with Federal
23 Rule of Civil Procedure 8, fails to state a cognizable claim upon which relief may be granted, and
24 should be dismissed for failure to obey a court order and failure to state a claim.

25 Accordingly, the Court HEREBY ORDERS the Clerk of the Court to randomly assign a
26 district judge to this action.

27 Furthermore, IT IS HEREBY RECOMMENDED that this action be dismissed, with
28 prejudice, for failure to obey a court order and for failure to state a claim upon which relief may

1 be granted.

2 These findings and recommendations are submitted to the United States District Judge
3 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
4 **(14) days** after being served with these findings and recommendations, Plaintiff may file written
5 objections with the Court. Such a document should be captioned “Objections to Magistrate
6 Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within
7 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d
8 834, 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

9
10 IT IS SO ORDERED.

11 Dated: September 20, 2022

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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