

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTINA MOORE,

 Plaintiff,

 v.

KEITH FAGUNDES,

 Defendants.

Case No. 1:23-cv-00846-EPG

FINDINGS AND RECOMMENDATIONS
RECOMMENDING THAT PLAINTIFF’S
COMPLAINT BE DISMISSED WITHOUT
LEAVE TO AMEND

OBJECTIONS, IF ANY, DUE WITHIN
TWENTY-ONE DAYS

(ECF No. 1)

ORDER DIRECTING THE CLERK OF
COURT TO ASSIGN A DISTRICT JUDGE

Plaintiff Christina Moore (“Plaintiff”) proceeds *pro se* and *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. (ECF No. 1). Plaintiff’s complaint, filed on June 2, 2023, seeks to hold Kings County District Attorney Keith Fagundes liable for failing to file a proper information in a state criminal case against Plaintiff. Plaintiff asks this Court to dismiss the state criminal case with prejudice and to enter a permanent injunction requiring Kings County to adopt appropriate policies related to the hiring and supervision of its police officers and sheriffs.¹

¹ On June 15, 2023, Plaintiff filed a notice of removal to federal court averring that the United States of America had removed case number 20CMS-4632A (the state criminal case identified in Plaintiff’s complaint) to this Court pursuant to 28 U.S.C. 1446(d). The United States has not removed Plaintiff’s state criminal case to this Court. Moreover, Plaintiff’s notice does not identify any statutory basis applicable to her that would allow her state criminal

1 The Court concludes that the complaint fails to state any cognizable claims. Under settled
2 Federal law, prosecutors are immune from lawsuits for damages based on their work as
3 prosecutors in the case. Accordingly, the Court recommends dismissal of Plaintiff’s complaint.

4 **I. SCREENING REQUIREMENT**

5 As Plaintiff is proceeding *in forma pauperis*, the Court screens the complaint under 28
6 U.S.C. § 1915. (ECF No. 3). “Notwithstanding any filing fee, or any portion thereof, that may
7 have been paid, the court shall dismiss the case at any time if the court determines that the action
8 or appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

9 A complaint is required to contain “a short and plain statement of the claim showing that
10 the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
11 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
12 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
13 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A plaintiff must set forth “sufficient
14 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.*
15 (quoting *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting
16 this plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts “are
17 not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677,
18 681 (9th Cir. 2009) (citation and internal quotation marks omitted). Additionally, a plaintiff’s
19 legal conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678.

20 Pleadings of *pro se* plaintiffs “must be held to less stringent standards than formal
21 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that
22 *pro se* complaints should continue to be liberally construed after *Iqbal*).

23 **II. SUMMARY OF PLAINTIFF’S COMPLAINT**

24 Plaintiff’s complaint alleges that her Due Process and Equal Protection rights under the
25 Fourth and Fourteenth Amendments have been violated. (ECF No. 1, p. 3). Plaintiff also alleges
26 violations of her rights pursuant to the California constitution and California Penal Code Sections
27 739, 849, 859, 861, 864, 865, 866.6, 871.6, 876, 877, and 883. (*Id.*)

28 case to be removed to federal court. See 28 U.S.C. § 1442 (listing the type of defendants who may remove a criminal prosecution that is commenced in state court to federal court). As the Court is recommending that Plaintiff’s case be dismissed, the Court will take no action on Plaintiff’s notice of removal.

1 Plaintiff alleges as follows:

2 The District Attorney was negligent in the discharge of his duties and responsibilities by
3 not filing a proper information as provided in California Penal Code 872 in the Superior Court of
4 the county within 15 days after commitment according to California penal Code 739. (*Id.*, p. 4).
5 Plaintiff alleges that the violations at issue in her complaint took place on March 17, 2022, and
6 September 14, 2022. (*Id.*) In support of her complaint, Plaintiff includes as an exhibit an
7 information filed against Plaintiff in Kings County Superior Court and affidavit of fact filed by
8 Plaintiff in the criminal case. (*Id.*, pp. 7-12).

9 Plaintiff's affidavit states that Plaintiff was arrested without probable cause on September
10 14, 2020², in Courtroom 5 of the Kings County Superior Court. (*Id.*, p. 10). Plaintiff's affidavit
11 lists several deficiencies as to her arrest and charges. (*Id.*, pp. 11-12).

12 As relief, Plaintiff asks this Court to dismiss the criminal case with prejudice.

13 **III. ANALYSIS OF PLAINTIFF'S COMPLAINT**

14 Although Plaintiff provides very few facts in her complaint, it is clear that Plaintiff's
15 claims cannot proceed. Plaintiff is seeking to sue Defendant for prosecuting her in a criminal case
16 and for actions performed by Defendant in his role as a prosecutor. But prosecutors are immune
17 from such lawsuits under settled law, as the Ninth Circuit has explained:

18 Prosecutors performing their official prosecutorial functions are entitled to
19 absolute immunity against constitutional torts. The Supreme Court has held that
20 this rule follows for the same reason that prosecutors were given immunity at
21 common law—without it, resentful defendants would bring retaliatory lawsuits
22 against their prosecutors, and because a prosecutor “inevitably makes many
23 decisions that could engender colorable claims of constitutional deprivation[,
24 d]efending these decisions, often years after they were made, could impose unique
25 and intolerable burdens upon a prosecutor.” *Van de Kamp v. Goldstein*, 555 U.S.
26 335, 342, 129 S.Ct. 855, 172 L.Ed.2d 706 (2009) (quoting *Imbler v. Pachtman*,
27 424 U.S. 409, 425–26, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976)) (internal quotation
28 marks omitted). Without the promise of immunity from suit, a prosecutor would be
distracted from his duties and timid in pursuing prosecutions rather than exercising
the independent judgment and discretion that his office requires. *See id.* Moreover,
“the judicial process is available as a check on prosecutorial actions,” and it
reduces the need for private suits for damages to keep prosecutors in line. *Burns v.*
Reed, 500 U.S. 478, 492, 111 S.Ct. 1934, 114 L.Ed.2d 547 (1991); *see Mitchell v.*
Forsyth, 472 U.S. 511, 522–23, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985) (“[T]he

² The Court notes that Plaintiff's civil complaint form states that the incidents giving rise to her complaint took place on March 17, 2022, and September 14, 2022. (ECF No. 1, p. 4).

1 judicial process is largely self-correcting: procedural rules, appeals, and the
2 possibility of collateral challenges obviate the need for damages actions to prevent
unjust results.”).

3 *Lacey v. Maricopa County*, 693 F.3d 896, 912 (9th Cir. 2012); *see also Ashelman v. Pope*, 793
4 F.2d 1072, 1076 (9th Cir. 1986) (Prosecutorial immunity protects a prosecutor who “acts within
5 his or her authority and in a quasi-judicial capacity”); *Ybarra v. Reno Thunderbird Mobile Home*
6 *Village*, 723 F.2d 674, 678 (9th Cir. 1984) (“If the prosecutor acts as an advocate ‘in initiating a
7 prosecution and in presenting the State's case,’ absolute immunity is warranted.”).

8 That is not to say that Plaintiff has no way to challenge a charge or conviction that is
9 improper. Plaintiff may do so (subject to certain limitations) in her criminal case, through appeal
10 of any criminal conviction, or through a petition for writ of habeas corpus. However, Plaintiff
11 may not sue the prosecutors in her criminal case for pursuing criminal charges as part of their
12 prosecutorial function.

13 **IV. RECOMMENDATIONS AND ORDER**

14 For the foregoing reasons, the Court recommends dismissing Plaintiff’s case. The Court
15 also does not recommend giving leave to amend. Although this is Plaintiff’s first complaint, it is
16 clear that Plaintiff is attempting to sue a state prosecutor for actions performed in his role as
17 prosecutor. Prosecutors acting within their prosecutorial functions are immune from such
lawsuits, and thus leave to amend such a claim would be futile.

18 Accordingly, based on the foregoing, IT IS RECOMMENDED that:

- 19 1. Plaintiff’s complaint be dismissed.
- 20 2. The Clerk of the Court be instructed to close the case.

21 These findings and recommendations will be submitted to the United States district judge
22 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one
23 (21) days after being served with these findings and recommendations, Plaintiff may file written
24 objections with the Court. The document should be captioned “Objections to Magistrate Judge’s
25 Findings and Recommendations.” Plaintiff is advised that failure to file objections within the
26 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
27 838-39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Finally, IT IS ORDERED that the Clerk's Office assign a district judge to this case.

IT IS SO ORDERED.

Dated: October 3, 2023

/s/ Eric P. Gray
UNITED STATES MAGISTRATE JUDGE