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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RODERICK L. MITCHELL,
Plaintiff,

v.

JENNIFER SAWTELLE, DEPUTY
DISTRICT ATTORNEY, et al.,
Defendants.

No. 2:13-cv-01400-TLN-KJN PS

ORDER

Plaintiff, who is proceeding without counsel, filed his complaint and an application to proceed in forma pauperis on July 15, 2013.¹ (ECF Nos. 1-2.) For the reasons stated below, the undersigned grants plaintiff's application to proceed in forma pauperis (ECF No. 2), but dismisses his complaint. Plaintiff shall have leave to file an amended complaint.

I. Plaintiff's Application To Proceed In Forma Pauperis

Plaintiff requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff's application and declaration (ECF No. 2) make the showing required by 28 U.S.C. § 1915(a)(1). Accordingly, the undersigned grants plaintiff's request to proceed in forma pauperis.

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¹ This case proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 II. Screening Plaintiff's Complaint

2 a. *General Screening Standards*

3 The determination that a plaintiff may proceed in forma pauperis does not complete the
4 required inquiry. The court is also required to screen complaints brought by parties proceeding in
5 forma pauperis. See 28 U.S.C. § 1915(e)(2); see also Lopez v. Smith, 203 F.3d 1122, 1129 (9th
6 Cir. 2000) (en banc). Pursuant to 28 U.S.C. § 1915(e)(2), the court is directed to dismiss a case
7 filed pursuant to the in forma pauperis statute if, at any time, it determines that the allegation of
8 poverty is untrue, the action is frivolous or malicious, the complaint fails to state a claim on
9 which relief may be granted, or the action seeks monetary relief against an immune defendant.

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
12 Cir. 1984). The court may, therefore, dismiss a claim as frivolous if that claim is based on an
13 indisputably meritless legal theory or if the factual contentions are clearly baseless. Neitzke, 490
14 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pled, has an
15 arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

16 In assessing whether a plaintiff's complaint fails to state a claim on which relief can be
17 granted, the court adheres to "notice pleading" standards. See, e.g., Paulsen v. CNF, Inc., 559
18 F.3d 1061, 1071 (9th Cir. 2009). The notice pleading standards are codified, in part, in Federal
19 Rule of Civil Procedure 8(a), which provides:

20 (a) Claim for Relief. A pleading that states a claim for relief must
21 contain:

22 (1) a short and plain statement of the grounds for the court's
23 jurisdiction, unless the court already has jurisdiction and the claim
24 needs no new jurisdictional support;

24 (2) a short and plain statement of the claim showing that the
25 pleader is entitled to relief; and

25 (3) a demand for the relief sought, which may include relief in
26 the alternative or different types of relief.

27 Additionally, a complaint should be dismissed for failure to state a claim if it does not
28 "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its

1 face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550
2 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content
3 that allows the court to draw the reasonable inference that the defendant is liable for the
4 misconduct alleged.” Id. The court accepts all of the facts alleged in the complaint as true and
5 construes them in the light most favorable to the plaintiff. Autotel v. Nev. Bell Tel. Co., 697 F.3d
6 846, 850 (9th Cir. 2012); Corrie v. Caterpillar, 503 F.3d 974, 977 (9th Cir. 2007). The court is
7 “not, however, required to accept as true conclusory allegations that are contradicted by
8 documents referred to in the complaint, and [the court does] not necessarily assume the truth of
9 legal conclusions merely because they are cast in the form of factual allegations.” Paulsen, 559
10 F.3d at 1071 (citations and quotation marks omitted). The court must construe a pro se pleading
11 liberally to determine if it states a claim and, prior to dismissal, must tell the plaintiff of
12 deficiencies in the complaint and give the plaintiff an opportunity to cure those deficiencies if it
13 appears at all possible that the plaintiff can do so. See, e.g., Lopez, 203 F.3d at 1130-31; see also
14 Hebbe v. Pliler, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (stating that courts continue to construe
15 pro se filings liberally even when evaluating them under the standard announced in Iqbal).

16 Federal courts are courts of limited jurisdiction. Vacek v. UPS, 447 F.3d 1248, 1250 (9th
17 Cir. 2006). The plaintiff has the burden of establishing that subject matter jurisdiction is proper.
18 Kokkonen v. Guardian Life Ins. Co., 511 U.S. 375, 377 (1994). A federal court has an
19 independent duty to assess whether federal subject matter jurisdiction exists, whether or not the
20 parties raise the issue. See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960,
21 967 (9th Cir. 2004) (stating that “the district court had a duty to establish subject matter
22 jurisdiction over the removed action *sua sponte*, whether the parties raised the issue or not”);
23 accord Rains v. Criterion Sys., Inc., 80 F.3d 339, 342 (9th Cir. 1996) (“federal courts are under an
24 independent obligation to examine their own jurisdiction”) (citation omitted). Federal district
25 courts “may not grant relief absent a constitutional or valid statutory grant of jurisdiction,” and
26 “[a] federal court is presumed to lack jurisdiction in a particular case unless the contrary
27 affirmatively appears.” A-Z Int’l v. Phillips, 323 F.3d 1141, 1145 (9th Cir. 2003) (citations and
28 quotation marks omitted). The court must *sua sponte* dismiss a case for lack of subject matter

1 jurisdiction. See Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject
2 matter jurisdiction, the court must dismiss the action.”); see also Scholastic Entmt., Inc. v. Fox
3 Entmt. Group, Inc., 336 F.3d 982, 989 (9th Cir. 2003).

4 b. *Allegations In Plaintiff’s Complaint*

5 Plaintiff’s complaint alleges various “constitutional violations” in connection with
6 plaintiff’s criminal trial in state court.² (Compl., ECF No. 1 at 3.) In particular, plaintiff alleges
7 that

8 The Defendants[] committed numerous constitutional violations
9 against the Plaintiff, which include [b]ut [are] not limited to, Suppression of Exculpatory Brady material evidence, Admission of
10 Inadmissible evidence, Permitting and Aiding a complaining witness for the state to commit perjury, Allowing and Aiding in a
11 witness giving false testimony, Knowingly Allowing Government Agents to tamper with evidence and give false testimony and
12 Intentionally and Willfully committing Subordinate Acts. Petitioner as a result of the Defendant’s constitutional violations
13 against himself suffered [a] Great Miscarriage of Justice in that he was incarcerated for 11 years.

14 (Compl. at 3.) Plaintiff seeks injunctive relief, declaratory relief, compensatory damages, and
15 punitive damages in the amount of \$2.5 million. (Id. at 5.)

16 c. *Invalidity of Convictions or Sentences*

17 An 11-year sentence of confinement — and conduct during state court criminal
18 proceedings leading to it — form the basis of this action, yet plaintiff has not shown that his
19 sentence has been invalidated. In Heck v. Humphrey, 512 U.S. 477 (1994), the United States
20 Supreme Court held that a suit for damages on a civil rights claim concerning an allegedly
21 unconstitutional conviction or imprisonment cannot be maintained absent proof “that the
22 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
23 invalid by a state tribunal authorized to make such determination, or called into question by a
24 federal court’s issuance of a writ of habeas corpus, 28 U.S.C. § 2254.”³ Heck, 512 U.S. at 486.

25 ² The Complaint’s internal page numbering does not match up with the page numbers the Clerk
26 of the Court stamped at the top of each page of the document when it was filed. Unless otherwise
27 stated herein, the undersigned references the page numbers stamped at the top of each page of the
28 Complaint, i.e., the page numbers provided by the Clerk of the Court.

³ In Heck, the Supreme Court held:

1 Thus, “[i]f ‘a judgment in favor of the plaintiff would necessarily imply the invalidity of his
2 conviction or sentence,’ then ‘the complaint *must be dismissed* unless the plaintiff can
3 demonstrate that the conviction or sentence has already been invalidated.” Whitaker v. Garcetti,
4 486 F.3d 572, 583 (9th Cir. 2007) (quoting Heck, 512 U.S. at 487) (emphasis added).⁴

5 The undersigned finds that plaintiff’s case directly implicates the validity of
6 plaintiff’s underlying criminal proceeding and resulting sentence of incarceration. However,
7 plaintiff has not met the pleading requirements presented in Heck. Accordingly, plaintiff fails to
8 state a claim on which relief may be granted, and plaintiff’s complaint is dismissed without
9 prejudice. In any amended complaint, plaintiff must show that his criminal conviction and
10 resulting sentence have been invalidated in order to proceed with this action.

11 d. *Plaintiff’s Pleading Also Fails To Comply With Federal Rule Of Civil Procedure 8*

12 The undersigned also dismisses the complaint for failure to comply with the notice
13 pleading standards described above. Each allegation in a pleading must be simple, concise, and
14 direct. Fed. R. Civ. P. 8(d)(1). Yet plaintiff’s allegations are conclusory and often lack the
15 context necessary to allow the undersigned to decipher the factual bases of plaintiff’s claim(s).

17 [I]n order to recover damages for allegedly unconstitutional
18 conviction or imprisonment, or for other harm caused by actions
19 whose unlawfulness would render a conviction or sentence invalid,
20 a § 1983 plaintiff must prove that the conviction or sentence has
21 been reversed on direct appeal, expunged by executive order,
22 declared invalid by a state tribunal authorized to make such
determination, or called into question by a federal court’s issuance
of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages
bearing that relationship to a conviction or sentence that has not
been so invalidated is not cognizable under § 1983.

23 Heck, 512 U.S. at 486-87 (footnote omitted).

24 ⁴ The court in Whitaker also clarified that Heck applies to Section 1983 arising from
25 allegedly improper searches and seizures under the Fourth Amendment. Id. at 583-84 (“... a §
26 1983 action alleging illegal search and seizure of evidence upon which criminal charges are
27 based does not accrue until the criminal charges have been dismissed or the conviction has been
28 overturned. Such a holding will avoid the potential for inconsistent determinations on the legality
of a search and seizure in the civil and criminal cases . . .”) (quoting Harvey v. Waldron, 210
F.3d 1008, 1015 (9th Cir. 2000)).

1 For example, putting aside the fact that all of the alleged misconduct *appears* to have occurred
2 during criminal proceedings in state court which likely triggers certain immunities⁵ from suit,
3 plaintiff does not otherwise factually describe *how* defendants violated his rights and only
4 conclusorily states that they did so. (Compl. at 4.)

5 e. *Leave to Amend*

6 Plaintiff shall have leave to address the pleading requirements described in Heck and to
7 provide clarifying factual allegations to satisfy Federal Rule of Civil Procedure 8. The
8 undersigned emphasizes that the problem with plaintiff’s complaint is not one of length; it is a
9 problem of clarity and organization. In his amended pleading, if he can, plaintiff should allege
10 facts addressing the Heck requirements discussed above, should clearly identify the claims that he
11 wishes to pursue, and should provide succinct and coherent factual allegations supporting each
12 claim. Plaintiff should consider identifying each claim by an underlined “header,” and conveying
13 the factual allegations supporting each claim under that specific header.

14 Plaintiff is informed that the court cannot refer to prior pleadings in order to make an
15 amended complaint complete. Eastern District Local Rule 220 requires that an amended
16 complaint be complete in itself. This requirement is because, as a general rule, an amended
17 complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967)
18 (“The amended complaint supersedes the original, the latter being treated thereafter as non-
19 existent.”). Accordingly, once a plaintiff files an amended complaint, the original complaint no
20 longer serves any function in the case. Defendants not named in an amended complaint are no
21 longer defendants. Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

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23 ⁵ “Prosecutors are absolutely immune from liability under § 1983 for their conduct insofar as it
24 is ‘intimately associated’ with the judicial phase of the criminal process.” Botello v. Gammick,
25 413 F.3d 971, 975 (9th Cir. 2005); Burns v. Reed, 500 U.S. 478, 486 (1991). Prosecutors are
26 fully protected by absolute immunity when performing traditional activities related to the
27 initiation and presentation of criminal prosecutions. Imbler v. Pachtman, 424 U.S. 409, 430-31
28 (1976); Botello, 413 F.3d at 976 (it is “well established that a prosecutor has absolute immunity
for the decision to prosecute a particular case.”). Thus, even claims of malicious prosecution,
falsification of evidence, coercion of perjured testimony and concealment of exculpatory
evidence will be dismissed on grounds of prosecutorial immunity. See, e.g., Stevens v. Rifkin,
608 F. Supp. 710, 728 (N.D. Cal. 1984).

1 Plaintiff is also hereby informed that he is obligated to comply with court orders and the
2 rules of litigation procedure, notwithstanding his status as a pro se litigant. Eastern District Local
3 Rule 110 provides that “[f]ailure of counsel or of a party to comply with these Rules or with any
4 order of the Court may be grounds for imposition by the Court of any and all sanctions authorized
5 by statute or Rule or within the inherent power of the Court.” Moreover, Eastern District Local
6 Rule 183(a) provides, in part:

7 Any individual representing himself or herself without an attorney
8 is bound by the Federal Rules of Civil or Criminal Procedure, these
9 Rules, and all other applicable law. All obligations placed on
10 “counsel” by these Rules apply to individuals appearing in propria
11 persona. Failure to comply therewith may be ground for dismissal .
12 . . or any other sanction appropriate under these Rules.

11 See also King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987) (“Pro se litigants must follow the
12 same rules of procedure that govern other litigants.”). Case law is in accord that a district court
13 may impose sanctions, including involuntary dismissal of a plaintiff’s case pursuant to Federal
14 Rule of Civil Procedure 41(b), where that plaintiff fails to prosecute his or her case or fails to
15 comply with the court’s orders. See Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)
16 (recognizing that a court “may act *sua sponte* to dismiss a suit for failure to prosecute”); Hells
17 Canyon Preservation Council v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating that
18 courts may dismiss an action pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a
19 plaintiff’s failure to prosecute or comply with the rules of civil procedure or the court’s orders);
20 Ferdik, 963 F.2d at 1260 (“Pursuant to Federal Rule of Civil Procedure 41(b), the district court
21 may dismiss an action for failure to comply with any order of the court.”), cert. denied, 506 U.S.
22 915 (1992); Thompson v. Housing Auth. of City of L.A., 782 F.2d 829, 831 (9th Cir. 1986) (per
23 curiam) (stating that district courts have inherent power to control their dockets and may impose
24 sanctions including dismissal), cert. denied, 479 U.S. 829 (1986). Accordingly, plaintiff’s failure
25 to file an amended pleading by the deadline stated herein will result in a recommendation that this
26 action be dismissed.

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