

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  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SARAN SWAMI,

Plaintiff,

v.

DISTRICT ATTORNEY,

Defendant.

No. 2:14-cv-844-TLN-EFB PS

FINDINGS AND RECOMMENDATIONS

The court previously granted plaintiff’s request to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, but dismissed plaintiff’s complaint with leave to amend pursuant to 28 U.S.C. § 1915(e)(2). ECF No. 12. The order noted, among other things, that although plaintiff purported to assert a claim under 42 U.S.C. § 1983, it appeared that the only named defendant is immune from suit. Therefore, plaintiff’s complaint was dismissed. However, plaintiff was granted leave to file an amended complaint if he could allege cognizable legal theory against a proper defendant and sufficient facts in support of that cognizable legal theory.

As noted in the court’s prior order, although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519, 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s

1 obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and  
2 conclusions, and a formulaic recitation of a cause of action’s elements will not do. Factual  
3 allegations must be enough to raise a right to relief above the speculative level on the assumption  
4 that all of the complaint’s allegations are true.” *Id.* (citations omitted). Dismissal is appropriate  
5 based either on the lack of cognizable legal theories or the lack of pleading sufficient facts to  
6 support cognizable legal theories. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir.  
7 1990).

8 In reviewing a complaint under this standard, the court must accept as true the allegations  
9 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976),  
10 construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the  
11 plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy  
12 the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2)  
13 “requires a complaint to include a short and plain statement of the claim showing that the pleader  
14 is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds  
15 upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing  
16 *Conley v. Gibson*, 355 U.S. 41 (1957)).

17 Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only  
18 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,  
19 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,  
20 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction  
21 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a  
22 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be  
23 authorized by a federal statute that both regulates a specific subject matter and confers federal  
24 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity  
25 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the  
26 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*  
27 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction  
28 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of

1 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*  
2 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

3 As was the case with plaintiff's original complaint, his first amended complaint is  
4 unintelligible and the basis for his claim cannot be deciphered. He alleges that for decades he has  
5 predicted and observed the public killing and prosecution of victims by the County of  
6 Sacramento, that the county took control of a house he owned by suing him in state court, that  
7 this somehow led to the county causing "the killings of the occupants [of the house] by a fire,"  
8 and that defendant now wants to prosecute him. ECF No. 13 (emphasis omitted).

9 Plaintiff further claims that Officer Joyce Thorgrimson from the Sacramento District  
10 Attorney's Office obtained a search warrant by making false statements. *Id.* The only allegedly  
11 false statement identified in the complaint is that "attorney Oliver does not represent plaintiffs  
12 and all documents from plaintiffs should be seized." *Id.* Plaintiff alleges that he is represented by  
13 attorney Keith Oliver and that "Plaintiffs were [sic] running the office of attorney Keith Oliver  
14 from [his] home." *Id.* Plaintiff claims that on April 1, 2014, defendant allegedly came to  
15 plaintiff's house and took his computer and legal documents. Plaintiff contends this act was a  
16 violation of the attorney-client privilege, litigation privilege, private attorney general privilege  
17 and his right to privacy. *Id.* at 2. He also states that the state court ultimately found no  
18 wrongdoing on his part and that therefore all seized properties should be returned immediately.  
19 *Id.* The complaint purports to assert a claim pursuant to 42 U.S.C. §§ 1983 for violation of  
20 plaintiff's right to be "free from unlawful search and seizure and to be free from unwarranted  
21 governmental interference." *Id.* at 3.

22 Plaintiff's complaint specifically states that the "Defendant [in this action] is [the] District  
23 Attorney of Sacramento." *Id.* at 2. However, the complaint contains insufficient factual  
24 allegations to state a section 1983 claim against this defendant. As was previously explained to  
25 plaintiff, "[p]rosecutors are absolutely immune from liability under § 1983 for their conduct  
26 insofar as it is 'intimately associated' with the judicial phase of the criminal process." *Betello v.*  
27 *Gammick*, 413 F.3d 971, 975 (9th Cir. 2005). Plaintiff once again fails to allege any facts  
28 demonstrating that defendant's conduct was not intimately associated with the judicial phase of

1 the criminal process. Instead, he alleges little more than his property was seized pursuant to a  
2 warrant that he believes was invalid. Moreover, he does not provide any facts indicating how the  
3 defendant was involved in the alleged unlawful seizure of his property. Accordingly, plaintiff's  
4 complaint fails to state a claim.

5 Despite notice of the complaint's deficiencies and an opportunity to amend, plaintiff  
6 remains unable to state a proper claim for relief. Therefore, this action should be dismissed,  
7 without further leave to amend, for failure to state a claim. *See Lopez v. Smith*, 203 F.3d 1122,  
8 1129 (9th Cir. 2000) ("Under Ninth Circuit case law, district courts are only required to grant  
9 leave to amend if a complaint can possibly be saved. Courts are not required to grant leave to  
10 amend if a complaint lacks merit entirely."); *see also Doe v. United States*, 58 F.3d 494, 497 (9th  
11 Cir. 1995) ("[A] district court should grant leave to amend even if no request to amend the  
12 pleading was made, unless it determines that the pleading could not be cured by the allegation of  
13 other facts.").

14 Accordingly, it is hereby RECOMMENDED that the amended complaint (ECF No. 13) be  
15 dismissed for failure to state a claim upon which relief may be granted and that the Clerk be  
16 directed to close the case.

17 These findings and recommendations are submitted to the United States District Judge  
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
19 after being served with these findings and recommendations, any party may file written  
20 objections with the court and serve a copy on all parties. Such a document should be captioned  
21 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
22 objections shall be served and filed within fourteen days after service of the objections. The  
23 parties are advised that failure to file objections within the specified time may waive the right to  
24 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
25 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

26 DATED: April 6, 2016.

27   
EDMUND F. BRENNAN  
28 UNITED STATES MAGISTRATE JUDGE