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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ANDREW WALTERS,
Plaintiff,

No. 2:15-cv-0822-KJM-CMK-P

vs.

FINDINGS AND RECOMMENDATION

DAVID A. MASON, et al.,
Defendants.

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).¹

As plaintiff was previously informed, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28

¹ The undersigned originally screened plaintiff’s complaint and found his claim to be not cognizable as he is challenging the validity of his criminal conviction. See Heck v. Humphrey, 512 U.S. 477 (1994). However, in response to the findings and recommendation that this action be dismissed, plaintiff informed the court that his conviction has been reversed on appeal, and he is no longer incarcerated. As such, the prior findings and recommendation were not adopted by the District Court, and this matter was referred back to the undersigned for further proceedings.

1 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
2 complaints contain a “short and plain statement of the claim showing that the pleader is entitled
3 to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and
4 directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P.
5 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the
6 plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129
7 (9th Cir. 1996). Because plaintiff must allege with at least some degree of particularity overt acts
8 by specific defendants which support the claims, vague and conclusory allegations fail to satisfy
9 this standard. Additionally, it is impossible for the court to conduct the screening required by
10 law when the allegations are vague and conclusory.

11 **I. PLAINTIFF’S ALLEGATIONS**

12 Plaintiff claims that his criminal conviction is invalid because the trial court judge
13 lacked jurisdiction to impose the sentence. More specifically, he claims the court lost
14 jurisdiction over him as certain time restrictions were not complied with. He alleges the trial
15 court judge, David Mason, imposed the invalid sentence, and that the District Attorney, Sophia
16 Meyer, the probation department, Elias Fernandez, and his public defender, Willaim Briggs, each
17 assisted in the Judge’s decision to impose the sentence. He claims that his Fourth, Fifth, Eighth,
18 and Fourteenth Amendment rights have been violated, as well as other pendent state law claims.
19 He is asking for compensatory and special damages of an unspecified amount.

20 **II. DISCUSSION**

21 Plaintiff’s complaint is defective in that it seeks monetary relief from defendants
22 who are immune from such relief, and names defendants who were not acting under color of state
23 law for purposes of § 1983.

24 Plaintiff alleges Judge Mason imposed an invalid sentence on him. However,
25 judges are absolutely immune from damage actions for judicial acts taken within the jurisdiction
26 of their courts. See Schucker v. Rockwood, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam).

1 This immunity is lost only when the judge acts in the clear absence of all jurisdiction or performs
2 an act that is not judicial in nature. See id. Judges retain their immunity even when they are
3 accused of acting maliciously or corruptly, see Mireles v. Waco, 502 U.S. 9, 11 (1991) (per
4 curiam); Stump v. Sparkman, 435 U.S. 349, 356-57 (1978), and when they are accused of acting
5 in error, see Meek v. County of Riverside, 183 F.3d 962, 965 (9th Cir. 1999). This immunity
6 extends to the actions of court personnel when they act as “an integral part of the judicial
7 process.” See Mullis v. U.S. Bankruptcy Court, 828 F.2d 1385, 1390 (9th Cir. 1987). Here, the
8 only facts alleged make it clear that plaintiff only challenges acts that would be within the
9 Judge’s judicial role. The complaint only alleges that the Judge imposed an invalid sentence, not
10 that the Judge acted outside his judicial role. Whether the sentence imposed is an invalid
11 sentence or not, such an act is clearly within the Judge’s judicial role even if it was erroneous.
12 There is nothing in the complaint to indicate that this case relies on the Judge’s actions outside
13 his role as a judge. Thus, he is entitled to absolute immunity from this action, which seeks only
14 damages.

15 Plaintiff also alleges Elias Fernandez from the County Probation Department
16 assisted Judge Mason in imposing the invalid sentence. It is unclear from the allegations in the
17 complaint in what manner defendant Fernandez assisted Judge Mason, but a reasonable
18 interpretation of the complaint leads to the assumption that defendant Fernandez is a probation
19 officer, who likely assisted Judge Mason by preparing a presentence or probation report which is
20 used in determining a defendant’s sentence. “[P]robation officers preparing reports for the use of
21 state courts possess an absolute judicial immunity from damage suits under [§] 1983 arising from
22 acts performed within the scope of their official duties.” Demoran v. Witt, 781 F.2d 155, 157
23 (9th Cir. 1986). Again, plaintiff does not allege any facts that defendant Fernandez acted outside
24 his official role in assisting Judge Mason in determining what sentence to impose. As such,
25 Defendant Fernandez is entitled to immunity as to those acts.

26 Next, plaintiff alleges defendant Meyer, a District Attorney, also assisted Judge

1 Mason. However, prosecutorial immunity protects eligible government officials when they are
2 acting pursuant to their official role as advocate for the state. See Imbler v. Pachtman, 424 U.S.
3 409, 430 (1976). This immunity extends to actions during both the pre-trial and post-trial phases
4 of a case. See Demery v. Kupperman, 735 F.2d 1139, 1144 (9th Cir. 1984). State prosecutors
5 are entitled to absolute prosecutorial immunity for acts taken in their official capacity. See
6 Kalina v. Fletcher, 522 U.S. 118, 123-25 (1997). Again, the only acts alleged have to do with the
7 sentence the court imposed on plaintiff. Any assistance defendant Meyer gave Judge Mason
8 would fall within her official prosecutorial role. Prosecutorial immunity would therefore protect
9 defendant Meyer from this action.

10 Finally, plaintiff names his public defender as a defendant for any assistance he
11 may have provided the judge. However, public defenders, in their roll as advocates, are generally
12 not considered state actors acting under color of state law for § 1983 purposes. In general, § 1983
13 imposes liability upon any person who, acting under color of state law, deprives another of a
14 federally protected right. 42 U.S.C. § 1983 (1982). Section 1983 provides that “[e]very person
15 who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . ,
16 subjects, or causes to be subjected, any citizen of the United States or other person within the
17 jurisdiction thereof to the deprivation of any rights, privileges, or immunity secured by the
18 Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or
19 other proper proceeding for redress” 42 U.S.C. § 1983. Public defenders act as an advocate
20 for their client and are not acting under color of state law for § 1983 purposes, nor are attorneys
21 appointed by the court to represent a defendant in place of the public defender. See Georgia v.
22 McCullum, 505 U.S. 42, 53 (1992); Polk County v. Dodson, 454 U.S. 312, 320-25 (1981).
23 Therefor, to the extent plaintiff has named his public defender as a defendant to this action, he
24 cannot maintain such an action against such an individual.

25 Leave to amend should only be granted if it appears possible that the defects in
26 the complaint could be corrected. See Lopez v. Smith, 203 F.3d 1122, 1126, 1130-31 (9th Cir.

1 2000) (en banc); see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se
2 litigant must be given leave to amend his or her complaint, and some notice of its deficiencies,
3 unless it is absolutely clear that the deficiencies of the complaint could not be cured by
4 amendment.”) (citing Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987)). Here, plaintiff fails
5 to name a defendant against whom he can maintain an action. Because it does not appear possible
6 that the deficiencies identified herein can be cured by amending the complaint, plaintiff is not
7 entitled to further leave to amend prior to dismissal of the entire action. See Lopez, 203 F.3d at
8 1131. Therefore, leave to amend should not be granted.

9 III. CONCLUSION

10 Plaintiff’s complaint is defective in that it seeks monetary relief from defendants
11 who are immune from such relief, and names defendants who were not acting under color of state
12 law. As such defects are not subject to cure, no leave to amend should be granted and the court
13 should decline jurisdiction over plaintiff’s state law claims.

14 Based on the foregoing, the undersigned recommends that plaintiff’s complaint be
15 dismissed, without leave to amend.

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court. Responses to objections shall be filed within 14 days after service of
20 objections. Failure to file objections within the specified time may waive the right to appeal.
21 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22
23 DATED: December 11, 2017

24 
25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE