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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN E. KING,  
  
Plaintiff,  
  
v.  
  
JUDGE RICHARD K. SUEYOSHI, et al.,  
  
Defendants.

No. 2:15-cv-1521-TLN-EFB PS

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff seeks leave to proceed *in forma pauperis* pursuant to 28 U.S.C. 1915.<sup>1</sup> His declaration makes the showing required by 28 U.S.C. §1915(a)(1) and (2). *See* ECF No. 2. Accordingly, the request to proceed *in forma pauperis* is granted. 28 U.S.C. § 1915(a).

Determining that plaintiff may proceed *in forma pauperis* does not complete the required inquiry. Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. As discussed below, plaintiff’s complaint fails to state a claim and must therefore be dismissed.

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<sup>1</sup> This case, in which plaintiff is proceeding *in propria persona*, was referred to the undersigned under Local Rule 302(c)(21). *See* 28 U.S.C. § 636(b)(1).

1           Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,  
2 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it  
3 fails to set forth “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*  
4 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41  
5 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of  
6 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of  
7 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to  
8 relief above the speculative level on the assumption that all of the complaint’s allegations are  
9 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable  
10 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.  
11 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

12           In reviewing a complaint under this standard, the court must accept as true the allegations  
13 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740 (1976),  
14 construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the  
15 plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must satisfy  
16 the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule 8(a)(2)  
17 requires a complaint to include “a short and plain statement of the claim showing that the pleader  
18 is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds  
19 upon which it rests.” *Twombly*, 550 U.S. at 555 (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).

20           Additionally, a federal court is a court of limited jurisdiction, and may adjudicate only  
21 those cases authorized by the Constitution and by Congress. *Kokkonen v. Guardian Life Ins. Co.*,  
22 511 U.S. 375, 377 (1994). The basic federal jurisdiction statutes, 28 U.S.C. §§ 1331 & 1332,  
23 confer “federal question” and “diversity” jurisdiction, respectively. Federal question jurisdiction  
24 requires that the complaint (1) arise under a federal law or the U. S. Constitution, (2) allege a  
25 “case or controversy” within the meaning of Article III, § 2 of the U. S. Constitution, or (3) be  
26 authorized by a federal statute that both regulates a specific subject matter and confers federal  
27 jurisdiction. *Baker v. Carr*, 369 U.S. 186, 198 (1962). To invoke the court’s diversity  
28 jurisdiction, a plaintiff must specifically allege the diverse citizenship of all parties, and that the

1 matter in controversy exceeds \$75,000. 28 U.S.C. § 1332(a); *Bautista v. Pan American World*  
2 *Airlines, Inc.*, 828 F.2d 546, 552 (9th Cir. 1987). A case presumably lies outside the jurisdiction  
3 of the federal courts unless demonstrated otherwise. *Kokkonen*, 511 U.S. at 376-78. Lack of  
4 subject matter jurisdiction may be raised at any time by either party or by the court. *Attorneys*  
5 *Trust v. Videotape Computer Products, Inc.*, 93 F.3d 593, 594-95 (9th Cir. 1996).

6 Plaintiff alleges that in January 2014, he entered into a plea agreement for a 16 month  
7 sentence for petty theft with prior convictions. *Id.* at 2. After entering his plea, he was released  
8 on his own recognizance and ordered to appear back in court on February 6, 2014 for sentencing.  
9 *Id.* at 3-4, 30. He was also admonished that if he committed a new crime prior to the sentencing  
10 hearing, the court would not be bound by the terms of the plea agreement. *Id.* at 27. One week  
11 before the sentencing hearing, plaintiff was involved in a family dispute. *Id.* at 4. The police  
12 were called and plaintiff was arrested for being under the influence of methamphetamines. *Id.* at  
13 4, 32.

14 In light of plaintiff's arrest for the drug offense, plaintiff was sentenced to three years,  
15 rather than 16 months, in prison. *Id.* at 4, 35. Plaintiff claims that the state court judge and the  
16 district attorney violated his constitutional rights by giving him the maximum sentence of 3 years  
17 in prison. *Id.* Plaintiff appealed his sentence, which was denied. *Id.* at 3. He claims that his  
18 appointed public defender, Robert Martin, provided ineffective assistance of counsel by failing to  
19 contest his illegal sentence. *Id.* at 3.

20 Pursuant to California's Proposition 47, plaintiff's sentence was subsequently reduced to a  
21 misdemeanor and his sentence modified to one year in county jail, with one year of parole upon  
22 release. *Id.* at 5, 41. Plaintiff claims, however, that the imposition of one year of parole was  
23 unlawful. *Id.* at 5.

24 The complaint purports to allege claims under 42 U.S.C. § 1983 against Judge Richard K.  
25 Sueyoshi, the sentencing judge; Assistant Deputy District Attorney Brad Ng; Public Defender  
26 Robert Martin Jr.; Parole Agent J. Garcia; Parole Supervisor Marvin Speed; and Jeffrey Beard,  
27 the Secretary of the California Department of Corrections and Rehabilitation. The complaint fails  
28 to state a claim against these defendants for several reasons.

1 First, state prosecutors are entitled to absolute prosecutorial immunity for acts taken in  
2 their official capacity. See *Kalina v. Fletcher*, 522 U.S. 118, 123–24 (1997); *Buckley v.*  
3 *Fitzsimmons*, 509 U.S. 259, 269–70 (1993); *Imbler v. Pachtman*, 424 U.S. 409, 427, 430–31  
4 (1976) (holding that prosecutors are immune from civil suits for damages under § 1983 for  
5 initiating prosecutions and presenting cases). Plaintiff’s claim(s) against Deputy District  
6 Attorney Brad Ng relate to actions taken in Mr. Ng’s official capacity in relation to plaintiff’s  
7 sentencing. Accordingly, this defendant is immune from suit.

8 Judges are also absolutely immune from damage for judicial acts taken within the  
9 jurisdiction of their courts . . . . A judge loses absolute immunity only when [the judge] acts in the  
10 clear absence of all jurisdiction or performs an act that is not judicial in nature.” *Schucker v.*  
11 *Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam). As plaintiff’s claim(s) against  
12 Judge Sueyoshi relate to sentencing, an act that is judicial in nature, he is entitled to absolute  
13 immunity.

14 In addition, plaintiff’s court-appointed attorney, defendant Robert Martin, cannot be sued  
15 under § 1983. See *Polk County v. Dodson*, 454 U.S. 312, 318-19 (1981) (public defenders do not  
16 act under color of state law for purposes of § 1983 when performing a lawyer’s traditional  
17 functions). And any potential claims for legal malpractice do not come within the jurisdiction of  
18 the federal courts. *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir.1981).

19 As for defendants Garcia, Speed, and Beard, the complaint does not include any  
20 allegations indicating that these defendants were personally involved in the violation of plaintiff’s  
21 constitutional rights. An individual defendant is not liable on a civil rights claim unless the facts  
22 establish the defendant’s personal involvement in the constitutional deprivation or a causal  
23 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.  
24 See *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44  
25 (9th Cir. 1978). Plaintiff may not sue any official on the theory that the official is liable for the  
26 unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).  
27 He must identify the particular person or persons who violated his rights. He must also plead  
28 facts showing how that particular person was involved in the alleged violation. Plaintiff fails to

1 allege facts demonstrating that these three defendants participated in the deprivation of plaintiff's  
2 constitutional rights.

3 More fundamentally, plaintiff's claims, which challenge his state court conviction and  
4 sentence, are barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). In *Heck*, the United States  
5 Supreme Court held that a suit for damages on a civil rights claim concerning an allegedly  
6 unconstitutional conviction or imprisonment cannot be maintained absent proof "that the  
7 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared  
8 invalid by a state tribunal authorized to make such determination, or called into question by a  
9 federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254." 512 U.S. at 486. Under  
10 *Heck*, the court is required to determine whether a judgment in plaintiff's favor in this case would  
11 necessarily invalidate his conviction or sentence. *Id.* If plaintiff is claiming that his federal  
12 constitutional rights were violated and as a result he was convicted and incarcerated, he may not  
13 recover damages in this action unless he can prove that his conviction has been reversed. As  
14 plaintiff's claims are predicated on what he characterizes as unconstitutional and unlawful  
15 sentence, his claims are barred by *Heck*.

16 Furthermore, plaintiff seeks to challenge state court rulings through this civil rights action.  
17 However, federal courts lack jurisdiction to review or modify state court judgments. *See Rooker*  
18 *v. Fidelity Trust Company*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v.*  
19 *Feldman*, 460 U.S. 462, 482 (1983). "[L]ower federal courts do not have jurisdiction to review a  
20 case litigated and decided in state court; only the United States Supreme Court has jurisdiction to  
21 correct state court judgments." *Gottfried v. Medical Planning Services*, 142 F.3d 326, 330 (6th  
22 Cir.), *cert. denied*, 525 U.S. 1041, 119 S.Ct. 592 (1998); *see also Bianchi v. Rylaarsdam*, 334  
23 F.3d 895, 901 (9th Cir. 2003) ("Stated plainly, *Rooker-Feldman* bars any suit that seeks to disrupt  
24 or 'undo' a prior state-court judgment, regardless of whether the state-court proceeding afforded  
25 the federal-court plaintiff a full and fair opportunity to litigate her claims.").

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