

1 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
2 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
3 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
4 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
5 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
6 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
7 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
8 U.S. 662, 679 (2009).

9 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
10 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
11 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
12 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
13 678.

14 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
15 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
16 content that allows the court to draw the reasonable inference that the defendant is liable for the
17 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
18 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
19 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
20 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

21 **III. Screening Order**

22 Plaintiff’s complaint must be dismissed because he seeks monetary relief from a
23 defendant who is immune from suit. Plaintiff alleges that the deputy district attorney who
24 prosecuted him in his criminal case violated his civil rights by referring to plaintiff at trial, in the
25 presence of the jury, as the “the man in the orange jumpsuit.” ECF No. 1, § IV. Plaintiff seeks
26 fifteen million dollars in damages in order to deter future civil rights violations. *Id.*, § V.

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1 State prosecutors are entitled to absolute prosecutorial immunity for acts taken in their
2 official capacity. See *Kalina v. Fletcher*, 522 U.S. 118, 123–24 (1997); *Buckley v. Fitzsimmons*,
3 509 U.S. 259, 269–70 (1993); *Imbler v. Pachtman*, 424 U.S. 409, 427, 430–31 (1976) (holding
4 that prosecutors are immune from civil suits for damages under § 1983 for initiating prosecutions
5 and presenting cases). This action must therefore be dismissed pursuant to § 1915A because it
6 seeks monetary relief from a defendant who is immune from such relief.

7 Because the deficiencies in plaintiff’s claim cannot be cured by further amendment, the
8 complaint is dismissed without leave to amend. *Silva v. Di Vittorio*, 658 F.3d 1090, 1105 (9th
9 Cir. 2011) (“Dismissal of a pro se complaint without leave to amend is proper only if it is
10 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”
11 (internal quotation marks omitted)); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (“[A]
12 district court should grant leave to amend even if no request to amend the pleading was made,
13 unless it determines that the pleading could not be cured by the allegation of other facts.”).

14 **IV. Summary**

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is granted.
- 17 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
18 accordance with the notice to the California Department of Corrections and Rehabilitation
19 filed concurrently herewith.

20 Further, IT IS HEREBY RECOMMENDED that this action be dismissed pursuant to 28
21 U.S.C. § 1915A and the Clerk be directed to close the case.

22 These findings and recommendations are submitted to the United States District Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
24 after being served with these findings and recommendations, any party may file written
25 objections with the court and serve a copy on all parties. Such a document should be captioned
26 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

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1 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
2 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: October 19, 2015.

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5 EDMUND F. BRENNAN
6 UNITED STATES MAGISTRATE JUDGE
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