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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD FECTEAU,
Plaintiff,
v.
STATE OF CALIFORNIA, et al.,
Defendants.

No. 2:16-cv-809-EFB P

ORDER

Plaintiff is a county inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. He has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Request to Proceed In Forma Pauperis

Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C. § 1915(b)(1) and (2).

II. Screening Requirement and Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

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

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
16 678.

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

24 **III. Screening Order**

25 Plaintiff’s allegations (ECF No. 1) appear to stem from his arrests in July and December
26 of 2015 and his related court appearance in December of 2015. He claims that he was falsely
27 arrested and falsely imprisoned, and deprived of his Fifth and Sixth Amendment rights because he
28 is not a “person” subject to the court’s subject matter jurisdiction. He seeks “two billion dollars

1 for damages, illegal arrest, illegal incarceration, payable in silver dollars” and asks that “the
2 District Attorney YOUNG be found guilty and prosecuted for treason.” In addition to defendant
3 Young, the named defendants include the State of California, Sacramento County, and the
4 Sacramento County Superior Court. For the reasons discussed below, plaintiff’s complaint fails
5 to state a claim upon which relief can be granted and is dismissed with leave to amend.

6 To state a claim under § 1983, a plaintiff must allege: (1) the violation of a federal
7 constitutional or statutory right; and (2) that the violation was committed by a person acting under
8 the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988); *Jones v. Williams*, 297 F.3d
9 930, 934 (9th Cir. 2002). An individual defendant is not liable on a civil rights claim unless the
10 facts establish the defendant’s personal involvement in the constitutional deprivation or a causal
11 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
12 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
13 (9th Cir. 1978). Plaintiff may not sue any official on the theory that the official is liable for the
14 unconstitutional conduct of his or her subordinates. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).
15 He must identify the particular person or persons who violated his rights. He must also plead
16 facts showing how that particular person was involved in the alleged violation.

17 The Fifth Amendment provides that “[n]o person . . . shall be compelled in any criminal
18 case to be a witness against himself.” U.S. CONST., amend. V. The Fifth Amendment “can be
19 asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or
20 adjudicatory; and it protects against any disclosures which the witness reasonably believes could
21 be used in a criminal or could lead to other evidence that might be so used.” *United States v.*
22 *Bodwell*, 66 F.3d 1000, 1001 (9th Cir. 1995) (quotations and citation omitted). Plaintiff’s
23 allegations do not show that his right against self-incrimination was implicated, or that his
24 statements were used against him in a criminal proceeding.

25 Plaintiff also claims that his rights under the Sixth Amendment were violated. In criminal
26 prosecutions, the Sixth Amendment guarantees assistance of counsel to the accused. *Strickland v.*
27 *Washington*, 466 U.S. 668, 685 (1984). The right also includes access to law books, witnesses,
28 and other tools necessary to prepare a defense. *Taylor v. List*, 880 F.2d 1040, 1047 (1989).

1 Plaintiff alleges that he was appointed an attorney and that he filed that attorney. His vague and
2 conclusory allegations do not demonstrate a violation of his Sixth Amendment rights.

3 Moreover, the court notes that no private right of action exists for the crime of treason.
4 *McDaniel v. United States*, No. 2:15-cv-1114 MCE DAD PS, 2015 U.S. Dist. LEXIS 130602, at
5 * 4-5 (E.D. Cal. Sept. 25, 2015)

6 Plaintiff's vague and conclusory allegations are not sufficient to state a proper claim for
7 relief. Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair
8 notice and state the elements of the claim plainly and succinctly. *Jones v. Community Redev.*
9 *Agency*, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of
10 particularity overt acts in which defendants engaged that support a cognizable claim. *Id.*

11 Moreover, a municipal entity (such as Sacramento County) or its departments is liable
12 under section 1983 only if plaintiff shows that his constitutional injury was caused by employees
13 acting pursuant to the municipality's policy or custom. *Mt. Healthy City Sch. Dist. Bd. of Ed. v.*
14 *Doyle*, 429 U.S. 274, 280 (1977); *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658,
15 691 (1978); *Villegas v. Gilroy Garlic Festival Ass'n*, 541 F.3d 950, 964 (9th Cir. 2008). Local
16 government entities may not be held vicariously liable under section 1983 for the unconstitutional
17 acts of its employees under a theory of respondeat superior. *See Board of Cty. Comm'rs. v.*
18 *Brown*, 520 U.S. 397, 403 (1997).

19 Further, the named prosecutors are entitled to absolute prosecutorial immunity for acts
20 taken in their official capacity. *See Kalina v. Fletcher*, 522 U.S. 118, 123-24 (1997); *Buckley v.*
21 *Fitzsimmons*, 509 U.S. 259, 269-70 (1993); *Imbler v. Pachtman*, 424 U.S. 409, 427, 430-31
22 (1976) (holding that prosecutors are immune from civil suits for damages under § 1983 for
23 initiating prosecutions and presenting cases). In addition, plaintiff's court-appointed attorneys
24 also cannot be sued under § 1983. *See Polk County v. Dodson*, 454 U.S. 312, 318-19 (1981)
25 (public defenders do not act under color of state law for purposes of § 1983 when performing a
26 lawyer's traditional functions). And any potential claims for legal malpractice do not come
27 within the jurisdiction of the federal courts. *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th
28 Cir.1981). Judges are also absolutely immune from damage actions for judicial acts taken within

1 the jurisdiction of their courts . . . A judge loses absolute immunity only when [the judge] acts in
2 the clear absence of all jurisdiction or performs an act that is not judicial in nature.” *Schucker v.*
3 *Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam).

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

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

1 For these reasons, plaintiff's complaint fails to state a claim upon which relief can be
2 granted. Plaintiff will be granted leave to file an amended complaint to allege, if he can, a
3 cognizable legal theory against a proper defendant and sufficient facts in support of that
4 cognizable legal theory. *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*)
5 (district courts must afford pro se litigants an opportunity to amend to correct any deficiency in
6 their complaints). Should plaintiff choose to file an amended complaint, the amended complaint
7 shall clearly set forth the claims and allegations against each defendant. Any amended complaint
8 must cure the deficiencies identified above and also adhere to the following requirements:

9 Any amended complaint must identify as a defendant only persons who personally
10 participated in a substantial way in depriving him of a federal constitutional right. *Johnson v.*
11 *Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
12 constitutional right if he does an act, participates in another's act or omits to perform an act he is
13 legally required to do that causes the alleged deprivation).

14 It must also contain a caption including the names of all defendants. Fed. R. Civ. P. 10(a).

15 Plaintiff may not change the nature of this suit by alleging new, unrelated claims. *George*
16 *v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

17 Any amended complaint must be written or typed so that it so that it is complete in itself
18 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
19 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
20 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
21 F.3d 1467, 1474 (9th Cir. 1997) (the "'amended complaint supersedes the original, the latter
22 being treated thereafter as non-existent.'" (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
23 1967)).

24 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
25 Procedure, this court's Local Rules, or any court order may result in this action being dismissed.
26 *See* E.D. Cal. L.R. 110.

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IV. Summary of Order

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s request to proceed in forma pauperis (ECF No. 7) is granted.
2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to the Sacramento County Sheriff filed concurrently herewith.
3. The complaint is dismissed with leave to amend within 30 days. The complaint must bear the docket number assigned to this case and be titled “Amended Complaint.” Failure to comply with this order will result in dismissal of this action for failure to prosecute. If plaintiff files an amended complaint stating a cognizable claim the court will proceed with service of process by the United States Marshal.

Dated: October 5, 2017.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE