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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES R. BRAND,
Plaintiff,
v.
ANNE MARIE SCHUBERT, et al.,
Defendants.

No. 2:16-cv-1811-MCE-EFB P

ORDER GRANTING IFP AND SCREENING
COMPLAINT PURSUANT TO 28 U.S.C. §
1915A

Plaintiff is a county inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. He seeks leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915, and has filed what he styles as a petition for a writ of mandate.

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 The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A and finds it
26 must be dismissed. From the face of the complaint it is clear that plaintiff is suing defendants
27 who are immune from suit, and further, his allegations simply fail to state a claim. Plaintiff
28 alleges that his criminal defense attorneys are not raising certain issues in his defense and have

1 committed perjury by raising doubts as to his competency to stand trial. In addition to damages,
2 plaintiff requests that this court stay the competency proceedings in state court and order his
3 immediate release from confinement. Plaintiff names as defendants his defense attorneys, the
4 Sacramento County District Attorney, a Deputy District Attorney, two judges of the Sacramento
5 County Superior Court, the County of Sacramento, and the State of California.

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

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1 jurisdiction or performs an act that is not judicial in nature.” *Schucker v. Rockwood*, 846 F.2d
2 1202, 1204 (9th Cir. 1988) (per curiam).

3 In addition, the State of California is not a “person” within the meaning of § 1983 and is
4 immune from suit under the Eleventh Amendment. *Will v. Michigan Dep’t of State Police*, 491
5 U.S. 58, 66 (1989); *see also Hafer v. Melo*, 502 U.S. 21, 30 (1991) (clarifying that Eleventh
6 Amendment does not bar suits against state officials sued in their individual capacities, nor does it
7 bar suits for prospective injunctive relief against state officials sued in their official capacities).

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

16 Plaintiff’s requests for equitable relief are also improper. First, he asks this court to stay
17 state court proceedings regarding his competency to stand trial. Such an order is barred by
18 *Younger v. Harris*, 401 U.S. 37 (1971). Federal courts may not enjoin pending state criminal
19 proceedings except under extraordinary circumstances. *Id.* at 49, 53. No facts demonstrating
20 such extraordinary circumstances are alleged here. Second, plaintiff asks for immediate release
21 from the state’s custody. That claim, too, is barred. Claims that, if successful, would secure a
22 plaintiff’s immediate release, fall within the “core of habeas” and cannot be brought in a § 1983
23 action. *See Ramirez v. Galaza*, 334 F.3d 850, 856 (9th Cir. 2003). The Ninth Circuit has recently
24 clarified that “habeas is available only for state prisoner claims that lie at the core of habeas (and
25 is the exclusive remedy for such claims), while § 1983 is the exclusive remedy for state prisoner

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1 claims that do not lie at the core of habeas.” *Nettles v. Grounds*, F.3d , 2016 U.S. App.
2 LEXIS 13573 * 20, 2016 WL 3997255 (9th Cir. 2016).¹ Accordingly, this section 1983 suit is an
3 inappropriate vehicle for seeking release from custody.

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

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

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

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

19 Any amended complaint must be written or typed so that it so that it is complete in itself
20 without reference to any earlier filed complaint. E.D. Cal. L.R. 220. This is because an amended
21 complaint supersedes any earlier filed complaint, and once an amended complaint is filed, the
22 earlier filed complaint no longer serves any function in the case. *See Forsyth v. Humana*, 114
23 F.3d 1467, 1474 (9th Cir. 1997) (the ““amended complaint supersedes the original, the latter
24 being treated thereafter as non-existent.””) (quoting *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir.
25 1967)).

27 ¹ “[T]he general grant of habeas authority in Section 2241 is available for challenges by a
28 state prisoner who is not in custody pursuant to a state court judgment – for example, a defendant
in pre-trial detention[.]” *Stow v. Murashige*, 389 F.3d 880, 886 (9th Cir. 2004).

1 The court cautions plaintiff that failure to comply with the Federal Rules of Civil
2 Procedure, this court’s Local Rules, or any court order may result in this action being dismissed
3 with prejudice. *See* E.D. Cal. Local Rule 110.

4 **IV. Petition for Writ of Mandate**

5 Plaintiff also seeks a writ of mandate to compel the state court to dismiss one of his
6 “enhancing priors.” ECF No. 6 at 3. In addition to the bar of *Younger v. Harris* to interfering
7 with a pending state court criminal proceeding, federal courts are not the proper venue for
8 plaintiff to proceed with an appeal of a ruling by a state court. Further, in a federal mandamus
9 action, the court can only issue orders against employees, officers or agencies *of the United*
10 *States*. *See* 28 U.S.C. § 1361. Thus, the court cannot issue a writ of mandamus commanding
11 state courts to act in accordance with plaintiff’s requests. *See Demos v. United States Dist. Court*
12 *for the E. Dist. of Wash.*, 925 F.2d 1160, 1161 (9th Cir. 1991); *Clark v. Washington*, 366 F.2d
13 678, 681-82 (9th Cir. 1966). Therefore, the court cannot afford plaintiff the relief he requests. If
14 plaintiff contends that he is in custody in violation of the Constitution or laws or treaties of the
15 United States, he may commence a new action by filing an application for a writ of habeas corpus
16 pursuant to 28 U.S.C. § 2254.

17 **V. Summary of Order**

18 Accordingly, IT IS HEREBY ORDERED that:

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

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4. Plaintiff's "petition for writ of mandate" (ECF No. 6) is denied.

Dated: February 6, 2017.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE