

1 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims
2 that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be
3 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28
4 U.S.C. § 1915A(b)(1) & (2).

5 **A. Legal Standard**

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
11 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 In considering whether a complaint states a claim upon which relief can be granted, the
14 court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and construe
15 the complaint in the light most favorable to the plaintiff. See Scheuer v. Rhodes, 416 U.S. 232,
16 236 (1974). Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
17 See Haines v. Kerner, 404 U.S. 519, 520 (1972). Still, to survive dismissal for failure to state a
18 claim, a pro se complaint must contain more than “naked assertions,” “labels and conclusions” or
19 “a formulaic recitation of the elements of a cause of action.” Bell Atlantic Corp. v. Twombly,
20 550 U.S. 544, 555-57 (2007). In other words, “[t]hreadbare recitals of the elements of a cause of
21 action, supported by mere conclusory statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662,
22 678 (2009). Furthermore, a claim upon which the court can grant relief must have facial
23 plausibility. Twombly, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads
24 factual content that allows the court to draw the reasonable inference that the defendant is liable
25 for the misconduct alleged.” Iqbal, 556 U.S. at 678. Attachments to a complaint are considered
26 to be part of the complaint for purposes of a motion to dismiss for failure to state a claim. Hal
27 Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).

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1 **B. Discussion**

2 Plaintiff generally alleges that the public defender, the district attorney, and the judge in
3 his criminal proceedings in Colusa County Superior Court are conspiring against him and
4 violating his due process rights. (ECF No. 1.)

5 Plaintiff's claims are not appropriate under Section 1983, as it appears he is challenging
6 the criminal proceedings that led to him being incarcerated. At the time that the complaint was
7 filed, plaintiff had yet to be convicted and was being held in county custody pending trial. (ECF
8 No. 1.) “[W]hen a state prisoner is challenging the very fact or duration of his physical
9 imprisonment, and the relief he seeks is a determination that he is entitled to immediate or a
10 speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.”
11 Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). If plaintiff seeks to make a collateral attack on
12 his trial and imprisonment, the action should be filed pursuant to 28 U.S.C. § 2254.

13 However, a petition for a writ of habeas corpus is not a substitute for pursuing state
14 judicial remedies. See 28 U.S.C. § 2254(b). Therefore, a petition for writ of habeas corpus
15 should not be entertained unless the petitioner has first exhausted his state remedies. Baldwin v.
16 Reese, 541 U.S. 27, 29 (2004); Castille v. Peoples, 489 U.S. 346, 349 (1989). Concerns of
17 comity dictate that the State must first be afforded a full and fair opportunity to pass upon and
18 correct the alleged violation of its prisoners' federal rights. See Duncan v. Henry, 513 U.S. 364,
19 365 (1995). The exhaustion of state court remedies is a prerequisite to the granting of a petition
20 for writ of habeas corpus. 28 U.S.C. § 2254(b)(1).

21 According to the complaint, plaintiff has not been tried or convicted of any crimes at this
22 stage, so, therefore, any petition for a writ of habeas corpus would be premature. A petitioner
23 satisfies the exhaustion requirement by providing the highest state court with a full and fair
24 opportunity to consider all claims before presenting them to the federal court. Picard v. Connor,
25 404 U.S. 270, 276 (1971); Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1986). In order for
26 this court to address a petitioner's habeas claims, he must first be convicted and sentenced by the
27 state trial court. Thereafter, the petitioner must pursue his claims in the state courts of appeal
28 until the claims have been exhausted before the California Supreme Court. Accordingly, if this

1 court were to interpret the complaint as a petition for habeas corpus, it would be premature and
2 require dismissal until such time as when plaintiff exhausted his state court remedies.

3 In its present form, plaintiff's claims sound in habeas law and do not present cognizable
4 claims for relief pursuant to Section 1983. For these reasons, the complaint must be dismissed
5 without prejudice. The court will not grant leave to amend the complaint because amendment
6 would be futile, as it appears no set of facts can rectify that this case is, in its essence, a habeas
7 matter.

8 **II. Conclusion**

9 In accordance with the above, IT IS HEREBY ORDERED that Clerk of Court randomly
10 assign a district judge to this action, and IT IS HEREBY RECOMMENDED that this action be
11 dismissed without leave to amend for failure to state a cognizable claim.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, plaintiff may file written objections
15 with the court and serve a copy on all parties. Such a document should be captioned "Objections
16 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
17 objections within the specified time may waive the right to appeal the District Court's order.

18 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

19 Dated: September 28, 2017

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21 
22 DEBORAH BARNES
23 UNITED STATES MAGISTRATE JUDGE

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