



1 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41  
2 (1957)); see also Fed. R. Civ. P. 12(b)(6). “[A] plaintiff’s obligation to provide the ‘grounds’ of  
3 his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic recitation of  
4 a cause of action’s elements will not do. Factual allegations must be enough to raise a right to  
5 relief above the speculative level on the assumption that all of the complaint’s allegations are  
6 true.” *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable  
7 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.  
8 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

9 In reviewing a complaint under this standard, the court must accept as true the allegations  
10 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740  
11 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in  
12 the plaintiff’s favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must  
13 satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule  
14 8(a)(2) “requires a complaint to include a short and plain statement of the claim showing that the  
15 pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the  
16 grounds upon which it rests.” *Twombly*, 550 U.S. at 562-563 (2007).

## 17 II. Analysis

18 Like its predecessor, the immediate complaint relates to purported deficiencies in child  
19 dependency cases arising in El Dorado County Superior Court. But plaintiff maintains in the new  
20 complaint that *Younger* abstention is no longer appropriate because, now, the proceedings have  
21 entirely concluded. ECF No. 12 at 1. Nonetheless, the amended complaint fails to state a  
22 cognizable insofar as none of the remaining defendants – the El Dorado County Superior Court,  
23 El Dorado County Child Protective Services (“CPS”), and court appointed attorney Julie Tingler -  
24 are appropriate to a section 1983 action.<sup>1</sup> “A state court is not a ‘person’ for purposes of 42  
25 U.S.C. § 1983 and hence is not subject to lawsuit under that statute.” *Mumford v. Basinski*, 105  
26 F.3d 264, 267 (6th Cir. 1997); see *Ray v. New Jersey*, 219 F. App’x 121, 124 (3d Cir. 2007) (New

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27 <sup>1</sup> Plaintiff represents that he is no longer pursuing any claims against Judge Dylan  
28 Sullivan. ECF No. 12 at 1.

1 Jersey Superior Court was not a “person” under § 1983); *Johnson v. Supreme Court of Ill.*, 165  
2 F.3d 1140, 1140-41 (7th Cir. 1999) (state supreme court was not a “person” subject to suit); *see*  
3 *also Greater Los Angeles Council on Deafness v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987)  
4 (“We conclude that a suit against the Superior Court is a suit against the State, barred by the  
5 eleventh amendment.”). Nor can plaintiff maintain a section 1983 claim against CPS. Sub-units  
6 of local government have generally been deemed not to fall into the category of “persons” for the  
7 purposes of section 1983. *See United States v. Kama*, 394 F.3d 1236, 1239 (9th Cir. 2005)  
8 (municipal police departments and bureaus are generally not considered ‘persons’ within the  
9 meaning of Section 1983).

10 The only remaining defendant is Julie Tingler, who was allegedly appointed by the court  
11 to represent plaintiff’s interests at the dependency hearings. Generally, court appointed counsel  
12 are not considered state actors for the purposes of section 1983. *See Polk County v. Dodson*, 454  
13 U.S. 312, 325 (1981) (holding that public defenders do not act under color of state law when  
14 performing traditional functions as counsel in a criminal proceeding); *see also Kirtley v. Rainey*,  
15 326 F.3d 1088 (9th Cir. 2003) (private attorney appointed by court as a guardian ad litem does not  
16 act under color of law). Nevertheless, a claim can be stated against a public defender (or court  
17 appointed attorney) if facts are alleged that would show they conspired with state officials against  
18 client interests. *See Tower v. Glover*, 467 U.S. 914, 923 (1984). Nothing in the immediate  
19 complaint raises sufficient allegations of conspiracy, however. Plaintiff vaguely alludes to  
20 “concerted actions” between the state court, CPS, and defendant Tingler, but never contextualizes  
21 these claims. ECF No. 12 at 2. These conclusory allegations of conspiracy – assuming they are  
22 actually intended as such – are insufficient to state a claim. *Ivey v. Board of Regents*, 673 F.2d  
23 266, 268 (9th Cir. 1982).

#### 24 Leave to Amend

25 Having determined that this amended complaint, like its predecessor, fails to state a viable  
26 claim, the court must determine whether to grant plaintiff further leave to amend. The record and  
27 the immediate allegations counsel against it. Plaintiff has already been afforded one opportunity  
28 to amend and his failure to name any appropriate defendant counsels against further attempts.

1 Conclusion

2 Accordingly, it is RECOMMENDED that:

- 3 1. Plaintiff's first amended complaint (ECF No. 12) be dismissed without leave to amend  
4 for failure to state a claim upon which relief may be granted;
- 5 2. Plaintiff's motion for preliminary injunction (ECF No. 11) be denied as moot; and
- 6 3. The Clerk be directed to close the case.

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
12 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
13 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: February 19, 2019.

15   
16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE

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