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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON LAMONT STRIBLING,
Plaintiff,
v.
CAROLYN K. DELANEY, et al.,
Defendants.

No. 2:17-cv-2664-EFB P

ORDER GRANTING IFP AND FINDINGS
AND RECOMMENDATIONS TO DISMISS
ACTION PURSUANT TO 28 U.S.C. § 1915A

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, has also 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 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which

1 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
2 relief.” *Id.* § 1915A(b).

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

8 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
9 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
10 U.S. 662, 679 (2009).

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

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

23 **III. Screening Order**

24 Plaintiff’s complaint must be dismissed. He alleges that the federal magistrate judge
25 presiding over his civil lawsuit conspired with the defense attorney “to make a quick makeshift
26 answer” in order to deny plaintiff’s motion for default judgment, thereby depriving plaintiff of
27 \$50,000 in damages. *See* ECF No. 1 at 7. However, it is clear from the face of the complaint that
28 the claim is barred by absolute immunity.

1 The defendant judge is immune from plaintiff’s suit because the claims against her are
2 predicated on acts performed in her capacity as a judge. *See Ashelman v. Pope*, 793 F.2d 1072,
3 1078 (1986) (holding that “a conspiracy between judge and prosecutor to predetermine the
4 outcome of a judicial proceeding, while clearly improper, nevertheless does not pierce the
5 immunity extended to judges and prosecutors”). As for the claim against the defendant attorney,
6 it too fails because there is no allegation that the attorney is a state actor. *See West v. Atkins*, 487
7 U.S. 42, 48 (1988). Assuming he is a state actor, he too is immune from plaintiff’s suit. *See Fry*
8 *v. Melaragno*, 939 F.2d 832, 837 (1991) (“Whether the government attorney is representing the
9 plaintiff or the defendant, or is conducting a civil trial, criminal prosecution or an agency hearing,
10 absolute immunity is ‘necessary to assure that . . . advocates . . . can perform their respective
11 functions without harassment or intimidation.’” (citation omitted)).

12 Plaintiff also requests that the court allow him to file criminal charges against the
13 defendants and to remove the defendant judge from presiding over his other civil case. ECF No.
14 1 at 8. The court is unable to provide plaintiff with such relief. Whether to prosecute and what
15 charges to file are decisions that generally rest in the prosecutor’s discretion, not the court’s and
16 not plaintiff’s. *United States v. Batchelder*, 442 U.S. 114, 124 (1979). Moreover, if plaintiff
17 wishes to have the federal magistrate judge removed from the other civil case he is litigating, he
18 may file a motion for recusal in that case. This court’s jurisdiction does not extend to the other
19 case plaintiff is litigating.

20 For these reasons, plaintiff’s complaint must be dismissed without leave to amend. *See*
21 *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009); *Silva v. Di Vittorio*, 658 F.3d 1090, 1105
22 (9th Cir. 2011) (“Dismissal of a pro se complaint without leave to amend is proper only if it is
23 absolutely clear that the deficiencies of the complaint could not be cured by amendment.”
24 (internal quotation marks omitted)); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (“[A]
25 district court should grant leave to amend even if no request to amend the pleading was made,
26 unless it determines that the pleading could not be cured by the allegation of other facts.”).

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Accordingly, IT IS ORDERED that:

1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is granted.
2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in accordance with the notice to California Department of Corrections and Rehabilitation filed concurrently herewith.
3. The Clerk of the Court shall randomly assign a United States District Judge to this action.

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

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

DATED: May 16, 2018.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE