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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS JOSEPH MELGER,  
Plaintiff,  
v.  
RONALD SCOTT OWENS, District  
Attorney of Placer County,  
Defendant.

No. 2:18-cv-00018 KJM AC (PS)

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff is proceeding in this action pro se. This matter was accordingly referred to the undersigned by E.D. Cal. 302(c)(21). Plaintiff has filed a request for leave to proceed in forma pauperis (“IFP”), and has submitted the affidavit required by that statute. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will therefore be granted.

I. SCREENING

The federal IFP statute requires federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Plaintiff must assist the court in determining whether or not the complaint is frivolous, by drafting the complaint so that it complies with the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”).

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1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989). In reviewing a complaint under this standard, the  
3 court will (1) accept as true all of the factual allegations contained in the complaint, unless they  
4 are clearly baseless or fanciful, (2) construe those allegations in the light most favorable to the  
5 plaintiff, and (3) resolve all doubts in the plaintiff’s favor. See Neitzke, 490 U.S. at 327; Von  
6 Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010), cert.  
7 denied, 564 U.S. 1037 (2011).

8 The court applies the same rules of construction in determining whether the complaint  
9 states a claim on which relief can be granted. Erickson v. Pardus, 551 U.S. 89, 94 (2007) (court  
10 must accept the allegations as true); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974) (court must  
11 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a  
12 less stringent standard than those drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520  
13 (1972). However, the court need not accept as true conclusory allegations, unreasonable  
14 inferences, or unwarranted deductions of fact. Western Mining Council v. Watt, 643 F.2d 618,  
15 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice  
16 to state a claim. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Ashcroft v. Iqbal,  
17 556 U.S. 662, 678 (2009).

18 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to  
19 state a claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has  
20 facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
21 reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at  
22 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity  
23 to amend, unless the complaint’s deficiencies could not be cured by amendment. See Noll v.  
24 Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

25 A. The Complaint

26 Plaintiff brings suit against Ronald Scott Owens, District Attorney for Placer County, and  
27 “Representative Does 1-to-10,” who are unnamed Deputy District Attorneys. ECF No. 1 at 2.  
28 Plaintiff asserts that defendants improperly charged him with felony identity theft arising from an

1 incident which should have been charged as shoplifting. Id. at 5-6.

2 B. Analysis

3 The named defendants are immune from suit, and thus this case therefore must be  
4 dismissed without leave to amend. Immunity protects a prosecutor who acts within his or her  
5 authority and in a quasi-judicial capacity. Imbler v. Pachtman, 424 U.S. 409, 430-31(1976).  
6 “[A]cts undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for  
7 trial, and which occur in the course of his role as an advocate for the State, are entitled to the  
8 protections of absolute immunity.” Buckley v. Fitzsimmons, 509 U.S. 259, 273 (1993).  
9 Plaintiff’s case is stated only against county prosecutors, who act on behalf of the state, and all  
10 allegations relate directly to the actions they took against plaintiff in carrying out their  
11 prosecutorial duties. For this reason, the defendants are absolutely immune and the complaint  
12 must be dismissed. 28 U.S.C. § 1915(e)(2) (dismissal required where complaint seeks monetary  
13 relief from a defendant who is immune from such relief). Because this deficiency cannot be  
14 cured by amendment, no leave to amend is warranted. See Noll, 809 F.2d at 1448.<sup>1</sup>

15 II. PRO SE PLAINTIFF’S SUMMARY

16 Prosecutors cannot be sued for carrying out their duties, including charging decisions.  
17 Because plaintiff’s claims are against defendants who cannot be sued, the court is recommending  
18 that the case be dismissed without leave to amend.

19 III. CONCLUSION

20 In accordance with the above, IT IS HEREBY ORDERED that Plaintiff’s application to  
21 proceed in forma pauperis (ECF No. 2), is GRANTED.

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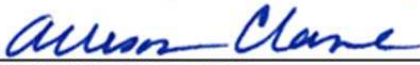
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24 <sup>1</sup> Additionally, if plaintiff has already been convicted in state court, his case is barred by Heck v.  
25 Humphrey, 512 U.S. 477, 484 (1994) in which the Supreme court held that a § 1983 action cannot  
26 be used to collaterally attack a criminal conviction unless the conviction or sentence has been  
27 reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal  
28 authorized to make a determination, or called into question by a federal court's issuance of a writ  
of habeas corpus. If plaintiff’s state criminal case is ongoing, it is barred by the abstention  
doctrine first announced in Younger v. Harris, 401 U.S. 37, 45 (1971), which held that federal  
courts should not ordinarily enjoin pending criminal proceedings in state courts.

1 Further, IT IS HEREBY RECOMMENDED that all claims against all defendants should  
2 be DISMISSED with prejudice.

3 These findings and recommendations are submitted to the United States District Judge  
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days  
5 after being served with these findings and recommendations, plaintiff may file written objections  
6 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
7 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
8 time may waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153  
9 (9th Cir. 1991).

10 IT IS SO ORDERED.

11 DATED: January 10, 2018

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13 ALLISON CLAIRE  
14 UNITED STATES MAGISTRATE JUDGE  
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