

1 U.S.C. § 1915(b)(2). Plaintiff's motion for ruling on his application (ECF No. 6) is denied as
2 moot.

3 Screening

4 I. Legal Standards

5 Pursuant to § 1915(e)(2), the court must dismiss the case at any time if it determines the
6 allegation of poverty is untrue, or if the action is frivolous or malicious, fails to state a claim on
7 which relief may be granted, or seeks monetary relief against an immune defendant.

8 Although pro se pleadings are liberally construed, *see Haines v. Kerner*, 404 U.S. 519,
9 520-21 (1972), a complaint, or portion thereof, should be dismissed for failure to state a claim if it
10 fails to set forth "enough facts to state a claim to relief that is plausible on its face." *Bell Atl.*
11 *Corp. v. Twombly*, 550 U.S. 544, 554, 562-563 (2007) (*citing Conley v. Gibson*, 355 U.S. 41
12 (1957)); *see also* Fed. R. Civ. P. 12(b)(6). "[A] plaintiff's obligation to provide the 'grounds' of
13 his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of
14 a cause of action's elements will not do. Factual allegations must be enough to raise a right to
15 relief above the speculative level on the assumption that all of the complaint's allegations are
16 true." *Id.* (citations omitted). Dismissal is appropriate based either on the lack of cognizable
17 legal theories or the lack of pleading sufficient facts to support cognizable legal theories.
18 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

19 In reviewing a complaint under this standard, the court must accept as true the allegations
20 of the complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trustees*, 425 U.S. 738, 740
21 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in
22 the plaintiff's favor, *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). A pro se plaintiff must
23 satisfy the pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure. Rule
24 8(a)(2) "requires a complaint to include a short and plain statement of the claim showing that the
25 pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the
26 grounds upon which it rests." *Twombly*, 550 U.S. at 562-563 (2007).

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1 II. Analysis

2 Although plaintiff names the County of Sacramento as a defendant in the caption of his
3 complaint, the substance of his allegations pertains to a deputy district attorney referenced as
4 “Ore.” Plaintiff alleges that Ore, on three separate occasions, submitted false information to
5 superior court judges which resulted in: (1) two search warrants; (2) one arrest warrant; and (3) a
6 finding that plaintiff had failed to register as a sex offender. ECF No. 1 at 3. Plaintiff claims that
7 he is not a sex offender and that Ore’s “terrible lies” have kept him in jail for the past year. *Id.*
8 These allegations are not cognizable under section 1983. It is well settled that a prosecutor is
9 entitled to absolute immunity from a civil action for damages when he performs a function that is
10 “intimately associated with the judicial phase of the criminal process.” *Imbler v. Pachtman*, 424
11 U.S. 409, 430 (1976). Functions that are protected by absolute immunity include appearing at a
12 probable cause hearing to support an application for a search warrant, preparing and filing an
13 arrest warrant, initiating a prosecution, and presenting the state’s case. *KRL v. Moore*, 384 F.3d
14 1105, 1110-11 (9th Cir. 2004). Plaintiff’s claims against Ore are, consequently, barred by
15 absolute immunity.¹

16 Leave to Amend

17 In light of the foregoing, leave to amend would not cure the defect in plaintiff’s claims. It
18 is clear from his complaint that he is attempting to sue the prosecutor in his state criminal
19 proceeding for actions by the prosecutor that are covered by absolute immunity. Thus, the
20 complaint must be dismissed without leave to amend.

21 Conclusion

22 Accordingly, it is ORDERED that:

- 23 1. Plaintiff’s application to proceed in forma pauperis (ECF No. 5) is GRANTED.
24 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
25 in accordance with the notice to the custodial agency filed concurrently herewith.

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27 ¹ Plaintiff states that, under state law, he has been “expunged and released” from the
28 requirement to register as a sex offender for six years. ECF No. 1 at 3. Even if this statement is
correct, it is an issue that sounds exclusively in state law and, since no viable federal claims have
been presented, should be presented to the state courts.

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- 3. His motions for service, ruling on motion to proceed in forma pauperis, and motion for funds to facilitate discovery (ECF Nos. 4, 6, & 7) are DENIED as moot; and
- 4. The Clerk of Court shall assign a district judge to rule on the court’s findings and recommendations.

Further, it is RECOMMENDED that plaintiff’s complaint be dismissed without leave to amend for failure to state a cognizable claim.

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: February 19, 2019.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE