



1           **II.     Allegations in the First Amended Complaint**

2           Plaintiff is a state inmate presently confined at Avenal State Prison following his  
3 conviction in the Sacramento County Superior Court for felony murder, robbery, and the use of a  
4 firearm. As in his original complaint, plaintiff generally alleges in his amended complaint that  
5 defendants are “continuing to conspire to deprive him... from securing DNA analysis of evidence  
6 secured during local sheriff’s investigation of the crime scene” in violation of California Penal  
7 Code § 1405. By way of relief, plaintiff seeks declaratory and injunctive relief in the form of  
8 access to DNA testing for six pieces of evidence recovered from the crime scene.

9           **III.     Analysis**

10          The court has reviewed plaintiff’s first amended complaint and finds that it fails to state a  
11 claim upon which relief can be granted under federal law and seeks relief from defendants who  
12 are immune from suit. In this court’s prior screening order, plaintiff was advised that the  
13 Sacramento County District Attorney and deputy district attorneys are absolutely immune from  
14 civil suits for damages under 42 U.S.C. § 1983. See ECF No. 11 at 3. Nonetheless, plaintiff  
15 included these defendants in his amended complaint. See ECF No. 16. Furthermore, plaintiff once  
16 again failed to connect the only other defendant, Sheriff Scott Jones, to any alleged constitutional  
17 violation. See ECF No. 11 at 3-4. Plaintiff merely states that defendant Jones has failed to turn  
18 over evidence in violation of California Penal Code § 1405. However, that does not establish a  
19 constitutional violation that is actionable via a § 1983 action. For all of these reasons, the  
20 undersigned recommends dismissing plaintiff’s first amended complaint.

21          **IV.     Leave to Amend**

22          If the court finds that a complaint or claim should be dismissed for failure to state a claim,  
23 the court has discretion to dismiss with or without leave to amend. Leave to amend should be  
24 granted if it appears possible that the defects in the complaint could be corrected, especially if a  
25 plaintiff is pro se. Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc); Cato v.  
26 United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given leave to  
27 amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that  
28 the deficiencies of the complaint could not be cured by amendment.” (citation omitted).

1 However, if, after careful consideration, it is clear that a claim cannot be cured by amendment,  
2 the Court may dismiss without leave to amend. Cato, 70 F.3d at 1105-06.

3 In light of plaintiff's failures to provide additional information about his claims despite  
4 specific instructions from the court, the undersigned finds that further leave to amend would be  
5 futile and the first amended complaint should be dismissed without leave to amend. Hartmann v.  
6 CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny leave to amend when  
7 amendment would be futile."). Here, plaintiff has not even attempted to cure any of the  
8 deficiencies described in this court's prior screening order. He merely repeats the same  
9 allegations against the same defendants which were previously found not to state a claim for  
10 relief. For this reason, the undersigned recommends denying further leave to amend the  
11 complaint.

12 **V. Plain Language Summary for Pro Se Party**

13 The following information is meant to explain this order in plain English and is not  
14 intended as legal advice.

15 It is recommended that your complaint be dismissed because it fails to state any  
16 cognizable claim for relief. Allowing you to further amend the complaint would be futile because  
17 you were not able to cure any of the previously identified deficiencies with the original  
18 complaint. As a result, it is recommended that you not be granted further leave to amend your  
19 complaint and that this civil action be closed. If you disagree with this recommendation, you  
20 have 14 days to explain why it is not the correct result. Label your explanation as "Objections to  
21 the Magistrate Judge's Findings and Recommendations."

22 In accordance with the above, IT IS HEREBY ORDERED that the Clerk of Court  
23 randomly assign this matter to a district court judge.

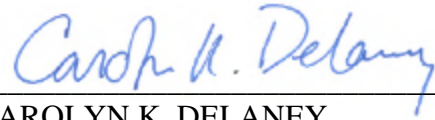
24 IT IS FURTHER RECOMMENDED that:

- 25 1. Plaintiff's first amended complaint be dismissed without leave to amend for failure to  
26 state a claim.
- 27 2. The Clerk of Court be directed to close this case.

28 These findings and recommendations are submitted to the United States District Judge

1 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
2 after being served with these findings and recommendations, any party may file written  
3 objections with the court and serve a copy on all parties. Such a document should be captioned  
4 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the  
5 objections shall be served and filed within fourteen days after service of the objections. The  
6 parties are advised that failure to file objections within the specified time may waive the right to  
7 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

8 Dated: April 17, 2020



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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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