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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SETH PETER SHANNON,
Plaintiff,
v.
VICTOR BACHAND, et al.,
Defendants.

No. 2:22-cv-1066-EFB (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a county jail inmate proceeding without counsel in an action brought under 42 U.S.C. § 1983. In addition to filing a complaint, he has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Application 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).

Screening 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

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which
2 relief may be granted,” or “seeks monetary relief from a defendant who is immune from such
3 relief.” *Id.* § 1915A(b).

4 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
5 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
6 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
7 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
8 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
9 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
10 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
11 U.S. 662, 679 (2009).

12 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
13 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
14 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
15 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
16 678.

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

24 Screening Order

25 The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A and finds it
26 must be dismissed without leave to amend. Plaintiff purports to bring a claim of malicious
27 prosecution and seeks protection from this court against the “continuation of criminal proceedings

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1 that have been intentionally caused by officer's and prosecutor's unconstitutional malicious acts."
2 ECF No. 1 at 3.

3 First, plaintiff may not pursue a malicious prosecution claim at this time given that he
4 appears to be awaiting trial. *See Womack v. County of Amador*, 551 F. Supp. 2d 1017, 1031 (E.D.
5 Cal. 2008) ("If a plaintiff cannot establish [that the proceedings were pursued to a legal
6 termination in his favor], his malicious prosecution action will fail."). Thus, plaintiff cannot state
7 a claim upon which relief can be granted.

8 Second, claims challenging aspects of the proceedings and rulings in an ongoing case
9 must be raised in those proceedings or on appeal afterwards. This court must abstain from
10 hearing those challenges based on the *Younger* Abstention Doctrine. *See Younger v. Harris*, 401
11 U.S. 37, 45, 46 (1971). *Younger* requires a district court to dismiss a federal action if the relevant
12 state proceedings are: (1) ongoing, (2) implicate important state interests, and (3) provide plaintiff
13 an adequate opportunity to raise the federal issue. *Columbia Basin Apartment Ass'n v. City of*
14 *Pasco*, 268 F.3d 791, 799 (9th Cir. 2001). All of these elements appear satisfied here – the
15 criminal proceedings are ongoing, important state interests are implicated in a criminal
16 prosecution, and there is no indication that plaintiff could not raise his claims in his criminal
17 cases. Further, there is no allegation of extraordinary circumstances which would warrant federal
18 intervention. *See Younger*, 401 U.S. at 45 (federal courts may not intervene in state criminal
19 actions "except under extraordinary circumstances where the danger of irreparable loss is both
20 great and immediate.").

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

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1 Conclusion

2 Accordingly, IT IS ORDERED that:

- 3 1. Plaintiff’s request to proceed in forma pauperis (ECF No. 2) is granted.
- 4 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
- 5 in accordance with the notice to the San Joaquin County Sheriff filed concurrently
- 6 herewith.
- 7 3. The Clerk of the Court shall randomly assign a United States District Judge to this
- 8 action.

9 Further, IT IS RECOMMENDED that this action be dismissed for failure to state a claim

10 upon which relief could be granted and because of the *Younger* Abstention Doctrine.

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

12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

13 after being served with these findings and recommendations, any party may file written

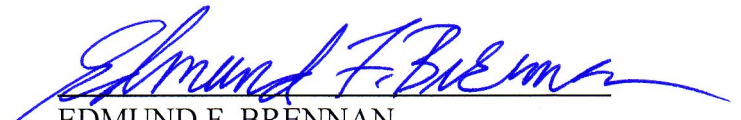
14 objections with the court and serve a copy on all parties. Such a document should be captioned

15 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections

16 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*

17 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: August 5, 2022.

19 
20 EDMUND F. BRENNAN
21 UNITED STATES MAGISTRATE JUDGE

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