

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRANDON MICHAEL GAMINO,
Plaintiff,
v.
JON EVERS, et al.,
Defendants.

No. 2:23-cv-03036-TLN-SCR

ORDER

Plaintiff is proceeding pro se in this action. This matter was accordingly referred to the undersigned pursuant to Local Rule 302(c)(21). Before the court are Plaintiff’s motion to proceed in forma pauperis (ECF No. 2), First Amended Complaint (ECF No. 3), and motion requesting action be taken (ECF No. 4). Plaintiff has submitted the necessary affidavit required by statute attesting to his inability to pay the filing fee. See 28 U.S.C. § 1915(a)(1). The motion to proceed IFP will be granted. Plaintiff’s motion requesting action be taken (ECF No. 4) requests that adjudication of his motion for IFP and is also granted. However, in screening Plaintiff’s first amended complaint (“FAC”), as required by Section 1915(a)(2), the Court concludes that the FAC does not allege sufficient facts to state a claim. Plaintiff will be granted leave to amend to address the deficiencies set forth herein.

///
///

1 I. SCREENING

2 A. Legal Standard

3 The federal IFP statute requires federal courts to dismiss a case if the action is legally
4 “frivolous or malicious,” fails to state a claim upon which relief may be granted or seeks
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
6 Courts must review the complaint that initiates the case in order to perform this screening
7 function. In reviewing the complaint, the Court is guided by the Federal Rules of Civil
8 Procedure, which are available online at [www.uscourts.gov/rules-policies/current-rules-practice-
9 procedure/federal-rules-civil-procedure](http://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure).

10 Under the Federal Rules of Civil Procedure, the complaint must contain (1) a “short and
11 plain statement” of the basis for federal jurisdiction (that is, the reason the case is filed in this
12 court, rather than in a state court), (2) a short and plain statement showing that plaintiff is entitled
13 to relief (that is, who harmed the plaintiff, and in what way), and (3) a demand for the relief
14 sought. Fed. R. Civ. P. 8(a). Plaintiff’s claims must be set forth simply, concisely and directly.
15 Fed. R. Civ. P. 8(d)(1). Forms are available to help pro se plaintiffs organize their complaint in
16 the proper way. They are available at the Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200),
17 Sacramento, CA 95814, or online at www.uscourts.gov/forms/pro-se-forms.

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

25 The court applies the same rules of construction in determining whether the complaint
26 states a claim on which relief can be granted. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (court
27 must accept the allegations as true); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974) (court must
28 construe the complaint in the light most favorable to the plaintiff). Pro se pleadings are held to a

1 less stringent standard than those drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520
2 (1972). However, the court need not accept as true conclusory allegations, unreasonable
3 inferences, or unwarranted deductions of fact. *Western Mining Council v. Watt*, 643 F.2d 618,
4 624 (9th Cir. 1981). A formulaic recitation of the elements of a cause of action does not suffice
5 to state a claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007); *Ashcroft v. Iqbal*,
6 556 U.S. 662, 678 (2009).

7 To state a claim on which relief may be granted, the plaintiff must allege enough facts “to
8 state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has
9 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
10 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at
11 678. A pro se litigant is entitled to notice of the deficiencies in the complaint and an opportunity
12 to amend, unless the complaint’s deficiencies could not be cured by amendment. *See Noll v.*
13 *Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987), superseded on other grounds by statute as stated in
14 *Lopez v. Smith*, 203 F.3d 1122 (9th Cir.2000)) (en banc).

15 B. The Complaint

16 Plaintiff’s first amended complaint (“FAC”) brings an action under 42 U.S.C. § 1983
17 against the County of Stanislaus (“County”), the City of Modesto (“City”), and three individual
18 defendants who are alleged to be County or City employees. ECF No. 3 at 4-5. Plaintiff alleges
19 that in 2010 he had a marijuana debt to a documented drug dealer named Smyrni. *Id.* at 2. The
20 allegations are unclear, but it appears Plaintiff alleges that Smyrni entrapped him because Smyrni
21 was friends with Defendant Emerson, a prosecuting district attorney. *Id.* Plaintiff alleges he was
22 arrested in 2011, and refers to a 2011 criminal case number. *Id.* He claims that Defendants
23 conspired to create probable cause and fabricated evidence resulting in his wrongful conviction.
24 *Id.* Plaintiff claims he was incarcerated in county jail for 1.5 years, but also states that his
25 damages are the result of serving 3,091 days. *Id.* at 6. Plaintiff seeks monetary damages.

26 C. Analysis

27 The FAC does not comply with Federal Rule of Civil Procedure 8 as it does not contain a
28 “short and plain” statement of the claim showing that Plaintiff is entitled to relief. The exact

1 nature of what happened to Plaintiff is unclear from the FAC, other than his complaint of state
2 criminal proceedings and apparent allegation that he was entrapped and wrongfully convicted.

3 Plaintiff brings his claims under § 1983, but that statute “is not itself a source of
4 substantive rights, but merely provides a method for vindicating federal rights elsewhere
5 conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989). A claim under § 1983 requires a
6 plaintiff to allege that defendants acting under color of state law deprived the plaintiff of a right
7 secured by the Constitution or federal statutes. *Benavidez v. County of San Diego*, 993 F.3d 1134,
8 1144 (9th Cir. 2021). It is not clear from the FAC what underlying Constitutional or other federal
9 rights Plaintiff alleges were violated. The caption mentions an unlawful search, but there are no
10 clear factual allegations of unlawful search. The caption similarly mentions malicious
11 prosecution and the Fourteenth Amendment, but does not contain a short a plain statement of
12 facts supporting those conclusory assertions.

13 Moreover, Plaintiff’s claim appears to be based on a state court conviction, and where a §
14 1983 action alleges constitutional violations that would necessarily imply the invalidity of the
15 conviction or sentence, the prisoner must establish that the underlying sentence or conviction has
16 been invalidated on appeal, by a habeas petition or through some similar proceeding. *See Heck v.*
17 *Humphrey*, 512 U.S. 477, 483–87 (1994). This “favorable termination” rule from *Heck* applies
18 regardless of the form of remedy sought, so long as the § 1983 action implicates the validity of an
19 underlying conviction. *See Edwards v. Balisok*, 520 U.S. 641, 646–48 (1997). Plaintiff has not
20 alleged that his conviction was invalidated on appeal, vacated, or otherwise set aside, and he
21 appears to claim that his Constitutional rights were violated by the wrongful conviction. Such a
22 civil rights claim, if allowed to proceed, would necessarily imply the invalidity of his conviction
23 and be barred by *Heck*.

24 Plaintiff’s FAC also makes allegations concerning occurrences in 2010 and 2011. ECF
25 No. 3 at 2. This action was not filed until 12 years later, and thus the claims appear to be time-
26 barred. “Section 1983 does not contain its own statute of limitations.” *Flynt v. Shimazu*, 940
27 F.3d 457, 461 (9th Cir. 2019) (citation and internal quotation marks omitted). Because § 1983
28 contains no specific statute of limitations, federal courts borrow state statutes of limitations for

1 personal injury actions in § 1983 suits. *See Nance v. Ward*, 597 U.S. 159, 174 (2022) (“[A]ll §
2 1983 suits must be brought within a State’s statute of limitations for personal-injury actions.”). In
3 California that period of limitations is two years. *See Holt v. County of Orange*, 91 F.4th 1013,
4 1018 (9th Cir. 2024).

5 Accordingly, the FAC fails to state a claim on which relief may be granted. It appears the
6 claims may be barred by *Heck* and are untimely under the applicable two-year statute of
7 limitations. However, Plaintiff is proceeding pro se and “[a] district court should not dismiss a
8 pro se complaint without leave to amend unless it is absolutely clear that the deficiencies of the
9 complaint could not be cured by amendment.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212 (9th Cir.
10 2012). Rather than recommending dismissal of the action, the undersigned will provide Plaintiff
11 an opportunity to amend the complaint to attempt to cure these defects.

12 II. AMENDING THE COMPLAINT

13 If plaintiff chooses to amend the complaint, the amended complaint must allege facts
14 supporting his allegation that his Constitutional or federal statutory rights were violated. In
15 addition, Plaintiff should address whether his state court conviction was overturned on appeal,
16 vacated, or set aside. Plaintiff should also address the apparent untimeliness of his claims. The
17 allegations of the complaint must be set forth in sequentially numbered paragraphs, with each
18 paragraph number being one greater than the one before, each paragraph having its own number,
19 and no paragraph number being repeated anywhere in the complaint. Each paragraph should be
20 limited “to a single set of circumstances” where possible. Rule 10(b). As noted above, forms are
21 available to help plaintiffs organize their complaint in the proper way. They are available at the
22 Clerk’s Office, 501 I Street, 4th Floor (Rm. 4-200), Sacramento, CA 95814, or online at
23 www.uscourts.gov/forms/pro-se-forms.

24 The amended complaint must not force the court and the defendants to guess at what is
25 being alleged against whom. *See McHenry v. Renne*, 84 F.3d 1172, 1177-80 (9th Cir. 1996)
26 (affirming dismissal of a complaint where the district court was “literally guessing as to what
27 facts support the legal claims being asserted against certain defendants”). The amended
28 complaint must not require the court to spend its time “preparing the ‘short and plain statement’

1 which Rule 8 obligated plaintiffs to submit.” *Id.* at 1180. The amended complaint must not
2 require the court and defendants to prepare lengthy outlines “to determine who is being sued for
3 what.” *Id.* at 1179.

4 Also, the amended complaint must not refer to a prior pleading in order to make plaintiff’s
5 amended complaint complete. An amended complaint must be complete in itself without
6 reference to any prior pleading. Local Rule 220. This is because, as a general rule, an amended
7 complaint supersedes the original complaint. *See Pacific Bell Tel. Co. v. Linkline*
8 *Communications, Inc.*, 555 U.S. 438, 456 n.4 (2009) (“[n]ormally, an amended complaint
9 supersedes the original complaint”) (citing 6 C. Wright & A. Miller, *Federal Practice &*
10 *Procedure* § 1476, pp. 556-57 (2d ed. 1990)). Therefore, in an amended complaint, as in an
11 original complaint, each claim and the involvement of each defendant must be sufficiently
12 alleged.

13 III. CONCLUSION

14 Accordingly, **IT IS HEREBY ORDERED** that:

- 15 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 2) is GRANTED;
- 16 2. Plaintiff’s motion requesting action be taken (ECF No. 4) is DENIED as moot;
- 17 3. Plaintiff **shall have 30 days from the date of this order** to file an amended complaint
18 that addresses the defects set forth above. The amended complaint must be labeled
19 “Second Amended Complaint” and must comply with Rule 8. If Plaintiff fails to timely
20 comply with this order, the undersigned may recommend that this action be dismissed.
- 21 4. Alternatively, if plaintiff no longer wishes to pursue this action plaintiff may file a notice
22 of voluntary dismissal of this action pursuant to Rule 41 of the Federal Rules of Civil
23 Procedure.

24 SO ORDERED.

25 DATED: August 28, 2024

26 
27 SEAN C. RIORDAN
28 UNITED STATES MAGISTRATE JUDGE