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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 EUREKA DIVISION

7
8 ROBERT LOCKWOOD,
9 Plaintiff,

10 v.

11 STATE OF CALIFORNIA,
12 Defendant.

Case No. 17-cv-3999-NJV (PR)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

13
14 Plaintiff, a Texas state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. §
15 1983. The court granted him leave to proceed in forma pauperis. (Doc. 7.)

16 **DISCUSSION**

17 **Standard of Review**

18 Federal courts must engage in a preliminary screening of cases in which prisoners seek
19 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. §
20 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
21 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
22 monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se
23 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
24 Cir. 1990).

25 Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the
26 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
27 statement need only “give the defendant fair notice of what the . . . claim is and the grounds
28 upon which it rests.”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although

1 in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s
2 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief” requires more than labels and
3 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .
4 Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell*
5 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must
6 proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United
7 States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*:
8 “While legal conclusions can provide the framework of a complaint, they must be supported by
9 factual allegations. When there are well-pleaded factual allegations, a court should assume their
10 veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft*
11 *v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
13 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
14 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,
15 487 U.S. 42, 48 (1988).

16 Legal Claims

17 Plaintiff claims that he was falsely arrested.

18 A claim of unlawful arrest is cognizable under § 1983 for violation of the Fourth
19 Amendment’s prohibition against unreasonable search and seizure if the allegation is that the
20 arrest was without probable cause or other justification. *See Pierson v. Ray*, 386 U.S. 547, 555-
21 558 (1967); *see, e.g. Lacey v. Maricopa County*, 693 F.3d 896, 918-919 (9th Cir. 2012) (en banc)
22 (allegations that special prosecutor ordered or otherwise procured arrests and arrests were without
23 probable cause enough to state a § 1983 claim of unlawful arrest against special prosecutor);
24 *Conner v. Heiman*, 672 F.3d 1126, 1132 (9th Cir. 2012) (reversing denial of qualified immunity
25 when there was “no question” that officers had probable cause to believe that plaintiff had
26 committed the actus reus of theft, even though reasonable people could draw different conclusions
27 based on plaintiff’s behavior). A claim of bad faith in making an arrest may also be a cause of
28 action under § 1983 as an illegal and unconstitutional arrest. *See Bretz v. Kelman*, 773 F.2d 1026,

1031 (9th Cir. 1985) (en banc).

In order to recover damages for an allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994). A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983. *Id.* at 487.

Plaintiff states he was unlawfully arrested in California by San Benito County Sheriff's officers. He states that he was arrested because of the State of Texas. It is not clear if he was arrested based on a Texas warrant or if there was an independent crime and conviction in California. He seeks money damages and expungement of his criminal record.

To challenge his conviction, plaintiff must file a habeas petition. To obtain money damages, plaintiff must first demonstrate that his conviction has been reversed or expunged. The complaint is dismissed with leave to amend. Plaintiff must provide more information concerning his arrest and conviction. He must also identify the individual San Benito County Sheriffs and describe their actions.

CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The amended complaint must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to amend within the designated time will result in the dismissal of this case.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court

1 informed of any change of address by filing a separate paper with the clerk headed "Notice of
2 Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so
3 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
4 Procedure 41(b).

5 **IT IS SO ORDERED.**

6 Dated: August 22, 2017

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8 **NANDOR J. VADAS**
9 United States Magistrate Judge
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