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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GEORGE DANIEL,

Plaintiff,

No. C 13-02426 JSW

v.

SANTA ROSA JUNIOR COLLEGE,

Defendant.

**ORDER REGARDING MOTIONS  
TO DISMISS AND MOTION TO  
DISQUALIFY**

Now before the Court are three motions to dismiss, one by defendants Sonoma County Junior College District, erroneously sued as Santa Rosa Junior College (“SRJC”), SRJC Officer Joseph Richards (“Richards”), and SRJC Officer Brittany Hawks (“Hawks”) (collectively referred to as “SRJC Defendants”), one by defendants County of Sonoma (the “County”), Sonoma County District Attorney’s Office (the “County DA Office”), Sonoma County District Attorney Jill R. Ravitch (“Ravitch”), the Sonoma County Sheriff’s Office (the “Sheriff’s Office”), Sonoma County Sheriff Steve Freitas (“Freitas”), and Sonoma County Assistant Sheriff Randall Walker (“Walker”) (collectively referred to as “County Defendants”), and one by defendants Superior Court of California for the County of Sonoma (“Sonoma Superior Court”), Sonoma County Judge Bradford DeMeo (“Judge DeMeo”), and Sonoma County Judge Gregory M. Caskey (“Judge Caskey”) (collectively referred to as “Sonoma Court Defendants”). Also before the Court is the motion to disqualify filed by Plaintiff George Daniel (“Plaintiff”). The Court has considered the parties’ papers, relevant legal authority, and it finds these matters suitable for disposition without oral argument. *See* N.D. Civ. L.R. 7-1(b). Accordingly, the

United States District Court  
For the Northern District of California

1 hearing set for March 7, 2014 is VACATED. Having considered the parties' pleadings and  
2 relevant legal authority, the Court hereby (1) grants in part and denies in part the SRJC  
3 Defendants' motion to dismiss, (2) grants in part and denies in part the County Defendants'  
4 motion to dismiss, (3) grants the Sonoma Court Defendants' motion to dismiss, and (4) denies  
5 Plaintiff's motion to disqualify.

### 6 BACKGROUND

7 On May 29, 2013, Plaintiff filed this action to challenge the events surrounding his  
8 arrest on May 26, 2012 and subsequent imprisonment. He contends that the Court has  
9 jurisdiction, *inter alia*, pursuant to 42 U.S.C. §§ 1983, 1985, and 1986.

10 On May 26, 2012, Richards and Hawks arrested Plaintiff and brought him to a facility  
11 he refers to as the Sonoma County Main Adult Detention Facility ("MADF"). (Compl., ¶ 58.)  
12 Plaintiff alleges that his arrest was unlawful and that he was required to provide identification in  
13 violation of the Fourth Amendment. (*Id.*) He further alleges that on July 18, 2012, Judge  
14 Caskey ordered him into custody for five days for contempt of court because Plaintiff refused to  
15 accept a public defender as his attorney. (*Id.*, ¶ 63.)

16 Although it is difficult to decipher precisely what facts Plaintiff alleges, he appears to  
17 contend that Richards and Hawks arrested him for violating California Penal Code § 148 when  
18 he refused to provide identification. (*Id.*, ¶ 70.) Plaintiff contends that there was no probable  
19 cause to arrest or detain him. (*Id.*, ¶ 129.) Plaintiff alleges that he continually demanded to be  
20 taken before a magistrate judge for a probable cause hearing. Richards and Hawks, who  
21 Plaintiff refers to as the "Kidnappers," took Plaintiff to MADF. (*Id.*, ¶¶ 92-93.)

22 Plaintiff was repeatedly asked for identifying information, such as his first and last  
23 name, his address, and his birth date. (*Id.*, ¶ 99.) Plaintiff was told that the booking process  
24 could not be completed and he would be kept in a holding cell until he answered the questions.  
25 (*Id.*, ¶ 101.)

26 Plaintiff alleges that he was tortured when he was held with tight gripping hands around  
27 his arms and his arms were twisted. He was pushed and fell to the ground from the pain. (*Id.*, ¶

1 103.) Unspecified agents twisted his arms even more forcefully, as well as his legs. Another  
2 agent “dug a knee” into his back. (*Id.*, ¶ 104.)

3 Plaintiff was then brought to and left in a holding cell. His clothing was stripped off and  
4 he was left with a small blanket. Plaintiff began developing bed sores. (*Id.*, ¶¶ 107, 109.)

5 Plaintiff was later provided with prison clothing and taken to a “regular” cell. (*Id.*, ¶ 114.)

6 Plaintiff was released on May 29, 2012 and estimates that he spent 68 hours in jail. (*Id.*,  
7 ¶ 116.)

8 Plaintiff alleges that a formal complaint was not filed until June 6, 2012, which he  
9 contends was outside of the 72-hour period required by law. (*Id.*, ¶ 118.) He further appears to  
10 allege that the criminal complaint against him was not properly supported by oath or affirmation  
11 and that the criminal complaint was dismissed when the “DA exceeded the time to bring a  
12 misdemeanor case to trial.” (*Id.*, ¶¶ 69-70.)

13 On June 26, 2012, Plaintiff was arraigned. Judge DeMeo presided. (*Id.*, ¶¶ 136-156.)  
14 Plaintiff attended another hearing on July 18, 2012. Judge Caskey presided and sent Plaintiff to  
15 jail for five days for contempt of court based on Plaintiff’s refusal to agree to the appointment  
16 of a public defender. (*Id.*, ¶¶ 157-174.) Plaintiff spent a night in jail. (*Id.*, ¶ 177.)

17 Plaintiff bring four claims. The first is labeled violation of the Fourth, Fifth, and  
18 Fourteenth Amendments of the United States Constitution, and appears to allege that defendants  
19 violated the Due Process Clause. (*Id.*, ¶¶ 191-201.) The second is labeled false arrest, false  
20 imprisonment and alleges that he was arrested and detained without probable cause. Plaintiff  
21 references 42 U.S.C. § 1983. (*Id.*, ¶¶ 203-209.) His third claim is labeled excessive force and  
22 references the Fourth Amendment. (*Id.*, ¶¶ 211-219.) His fourth claim is labeled violation of  
23 the Eight Amendment - cruel and unusual punishment. (*Id.*, ¶¶ 221-228.) Plaintiff also  
24 references the Sixth Amendment. (*Id.*, ¶ 30.)

25 Plaintiff seeks damages, including punitive damages, and an injunction enjoining  
26 Defendants from contacting Plaintiff for any reason unless a Defendant personally witnesses  
27 Plaintiff commit a felony. (*Id.*, pp. 44-45.)

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1 ANALYSIS

2 **A. Legal Standards Applicable to Motion to Dismiss.**

3 Defendants move to dismiss for lack of subject matter jurisdiction, pursuant to Federal  
4 Rule of Civil Procedure 12(b)(1), and for failure to state a claim, pursuant to Rule 12(b)(6).  
5 When a defendant moves to dismiss a complaint or claim for lack of subject matter jurisdiction,  
6 the plaintiff bears the burden of proving that the court has jurisdiction to decide the claim.  
7 *Thornhill Publ'n Co. v. Gen. Tel. & Elecs. Corp.*, 594 F.2d 730, 733 (9th Cir. 1979). Federal  
8 courts can only adjudicate cases which the Constitution or Congress authorize them to  
9 adjudicate: cases involving diversity of citizenship, or those cases involving a federal question,  
10 or where the United States is a party. *See, e.g., Kokkonen v. Guardian Life Ins. Co. of Am.*, 511  
11 U.S. 375, 377 (1994).

12 A motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) may be  
13 “facial or factual.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004).  
14 Where an attack on jurisdiction is a “facial” attack on the allegations of the complaint, as is the  
15 case here, the factual allegations of the complaint are taken as true and the non-moving party is  
16 entitled to have those facts construed in the light most favorable to him or her. *Federation of*  
17 *African Am. Contractors v. City of Oakland*, 96 F.3d 1204, 1207 (9th Cir. 1996).

18 A motion to dismiss is proper under Federal Rule of Civil Procedure 12(b)(6) where the  
19 pleadings fail to state a claim upon which relief can be granted. The Court’s “inquiry is limited  
20 to the allegations in the complaint, which are accepted as true and construed in the light most  
21 favorable to the plaintiff.” *Lazy Y Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).  
22 Even under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), “a  
23 plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than  
24 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not  
25 do.” *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*,  
26 478 U.S. 265, 286 (1986)).

27 Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but  
28 must instead allege “enough facts to state a claim to relief that is plausible on its face.” *Id.* at

1 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the  
2 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
3 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). If the  
4 allegations are insufficient to state a claim, a court should grant leave to amend, unless  
5 amendment would be futile. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir.  
6 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th  
7 Cir. 1990).

8 **B. Defendants’ Motions to Dismiss.**

9 Plaintiff references 42 U.S.C. § 1983 (“Section 1983”), but appears to assert claims for  
10 violations of his rights under the Fourth, Fifth, Eighth and Fourteenth Amendments of the  
11 United States Constitution. However, Section 1983 provides the exclusive remedy for claims  
12 alleging violations of federal constitutional rights. *Bank of Lake Tahoe v. Bank of America*, 318  
13 F.3d 914, 917 (9th Cir. 2003)); *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705  
14 (9<sup>th</sup> Cir. 1992) (“Plaintiff has no cause of action directly under the United States  
15 Constitution.”).<sup>1</sup> Because Plaintiff is *pro se*, the Court will construe the complaint as asserting  
16 claims directly under Section 1983 for the alleged constitutional violations.

17 **1. The Sonoma Court Defendants’ Motion to Dismiss.**

18 The Sonoma Court Defendants move to dismiss on the grounds that Plaintiff’s complaint  
19 against them is barred by the Eleventh Amendment. The Eleventh Amendment bars suits  
20 seeking damages against the State, including an “arm of the state” such as a state agent or  
21 agency. *See, e.g., Durning v. Citibank, N.A.*, 950 F.2d 1419, 1422-23 (9th Cir. 1991). “The

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23 <sup>1</sup> Plaintiff references 42 U.S.C. §§ 1985 and 1986 as a basis for jurisdiction, but does  
24 not appear to bring claims under these statutes. To the extent that he intended to bring such  
25 claims, he fails to allege facts sufficient to state a claim under either statute. To the extent  
26 Plaintiff attempts to state a claim under Section 1985(3), he fails to allege facts that show he  
27 is a member of a protected class. *See Sever v. Alaska Pulp Corporation*, 978 F.2d 1529,  
28 1536 (9th Cir. 1992) (a plaintiff must allege that the deprivation of the right in question was  
“motivated by ‘some racial, or perhaps otherwise class-based, invidiously discriminatory  
animus behind the conspirators’ action”); *see also McCalden v. California Library Ass’n*,  
955 F.2d 1214, 1223 (9th Cir. 1992) (“the plaintiff must be a member of a class that requires  
special federal assistance in protecting its civil rights”) (quoting *Gerritsen v. de la Madrid  
Hurtado*, 819 F.2d 1511, 1519 (9th Cir. 1987)). If a plaintiff fails to state a claim for relief  
under Section 1985, a claim under Section 1986 also fails. *See Dooley v. Reiss*, 736 F.2d  
1392, 1396 (9th Cir. 1984).

1 ultimate guarantee of the Eleventh Amendment is that nonconsenting States may not be sued by  
2 private individuals in federal court.” *Beentjes v. Placer County Air Pollution Control Dist.*, 397  
3 F.3d 775, 777 (9th Cir. 2005) (quoting *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363  
4 (2001)). The Sonoma Court is an agency of the State and is thus immune from suit. *See*  
5 *Greater Los Angeles Council on Deafness, Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987)  
6 (“[S]tate case law and constitutional provisions make clear that the Court is a State agency.”)

7 Further, the State cannot be construed as a person for purposes of 42 U.S.C. § 1983. *See*  
8 *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989). Title 42 U.S.C. § 1983  
9 provides, in relevant part, that “[e]very *person* who, under color of any statute, ordinance,  
10 regulation, custom, or usage ... subjects ... any citizen of the United States ... to the deprivation  
11 of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to  
12 the party.” 42 U.S.C. § 1983 (emphasis added). “Accordingly, only those governmental  
13 entities which are ‘persons’ within the meaning of § 1983 can be held liable under § 1983.”  
14 *Thompson v. City of Los Angeles*, 885 F.2d 1439, 1442-43 (9th Cir. 1989). “States or  
15 governmental entities that are considered ‘arms of the state’ for Eleventh Amendment purposes  
16 are not persons within the meaning of § 1983.” *Id.* at 1443 (citation and internal quotation  
17 marks omitted).

18 The Eleventh Amendment also bars suits against state officials where the state is the real  
19 party in interest. *Bair v. Krug*, 853 F. 2d 672, 675 (9th Cir. 1988). In *Bair*, the court held that  
20 the Eleventh Amendment barred claims against three state officials because the plaintiffs sought  
21 only retroactive relief and did not name the officials in their individual capacities. *Id.* The  
22 court reiterated the general rule that a state is the real party in interest where “the judgment  
23 sought would expend itself on public treasury or domain, or interfere with the public  
24 administration ....” *Id.* (citing *Demery v. Kupperman*, 735 F.2d 1139, 1146 (9th Cir. 1984)).

25 Here, Plaintiff fails to specify whether he sues the individual defendants in their official  
26 capacity, individual capacity, or both. To the extent Plaintiff sues Judge DeMeo and Judge  
27 Caskey for damages in their official capacity, his claims are barred by the Eleventh  
28 Amendment.

1 To the extent Plaintiff sues Judge DeMeo and Judge Caskey in their individual capacity,  
2 his claims are still barred, but by a different doctrine. His claims against these defendants are  
3 barred by the doctrine of judicial immunity. “[J]udicial immunity is an immunity from suit, not  
4 just from ultimate assessment of damages.” *Mireless v. Waco*, 502 U.S. 9, 11 (1991); *see also*  
5 *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978). “Judicial immunity applies ‘however  
6 erroneous the act may have been, and however injurious in its consequences it may have proved  
7 to the plaintiff.’” *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (quoting *Cleavinger*  
8 *v. Saxner*, 474 U.S. 193 (1985)). A judge lacks immunity only when he or she acts “in the clear  
9 absence of all jurisdiction ... or performs an act that is not ‘judicial’ in nature.” *Id.* (internal  
10 citation omitted). Thus, “absolute judicial immunity does not apply to non-judicial acts, i.e. the  
11 administrative, legislative, and executive functions that judges may on occasion be assigned to  
12 perform.” *Forrester v. White*, 484 U.S. 219, 227 (1988).

13 An act is considered “judicial” when it is a function normally performed by a judge and  
14 the parties dealt with the judge in his judicial capacity. *See Stump*, 435 U.S. at 362. To  
15 determine if an individual acted in an official judicial capacity, a court must analyze whether:  
16 “(1) the precise act is a normal judicial function; (2) the events occurred in the judge’s  
17 chambers; (3) the controversy centered around a case then pending before the judge; and (4) the  
18 events at issue arose directly and immediately out of a confrontation with the judge in his or her  
19 official capacity.” *Id.* (citation omitted); *see also Duvall v. County of Kitsap*, 260 F.3d 1124,  
20 1133 (9th Cir. 2001). Having again reviewed the allegations in the complaint, the Court  
21 concludes that each of the four factors set forth above demonstrates that Plaintiff’s allegations  
22 against Judge DeMeo and Judge Caskey arise from acts relating to the judicial process and not  
23 in excess of the judges’ jurisdiction. Accordingly, Plaintiff’s claims against Judge DeMeo and  
24 Judge Caskey are barred. The Court, thus, grants the Sonoma Court Defendant’s motion to  
25 dismiss. Moreover, Plaintiff’s claims against the Sonoma Court Defendants are dismissed with  
26 prejudice because any further amendment would be futile. *See DeSoto v. Yellow Freight Sys.,*  
27 *Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (leave to amend is properly denied where the  
28 amendment would be futile).

1           **2. The County Defendants’ Motion to Dismiss.**

2           **i. The County DA Office and Ravitch.**

3           The County Defendants move to dismiss Plaintiff’s complaint against the County DA  
4 Office and Ravitch on the grounds that they are immune from suit. Absolute or “quasi-judicial”  
5 immunity protects a prosecutor from civil, monetary liability for injuries that arise out of the  
6 prosecutor’s execution of duties that are “intimately associated with the judicial phase of the  
7 criminal process.” *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976). The immunity is quasi-  
8 judicial because it protects prosecutors when they make discretionary judgments, similar to  
9 those made by a judge, on the basis of evidence presented to them. *Id.* at 423 n. 20. Judges are  
10 accorded an absolute immunity for “acts committed within their judicial jurisdiction” because it  
11 serves the public interest to have judges who are at liberty to exercise their functions with  
12 independence and without fear of consequences. *Id.* at 418-19 n. 13 (internal citations omitted).  
13 Similarly, in the prosecutorial context, absolute immunity: (1) allows prosecutors to “focus their  
14 energies on prosecuting rather than defending lawsuits;” (2) enables prosecutors to “exercise  
15 independent judgment in deciding which suits to bring and conducting them in court;” (3)  
16 preserves “the criminal justice system’s function of determining guilt or innocence by ensuring  
17 that triers of fact are not denied relevant (although sometimes conflicting) evidence because of  
18 prosecutors’ fear of suit;” and (4) ensures fairness to defendants “by enabling judges to make  
19 rulings in their favor without the subconscious knowledge that such ruling could subject the  
20 prosecutor to liability.” *Id.*

21           Prosecutors who seek absolute immunity bear the burden of proof. *Buckley v.*  
22 *Fitzsimmons*, 509 U.S. 259, 269 (1993). Prosecutors enjoy a presumption of qualified rather  
23 than absolute immunity. *Id.* at 268; *Imbler*, 424 U.S. at 430. Absolute immunity only applies to  
24 a prosecutor’s “special functions,” *i.e.* those functions closely associated with the prosecutor’s  
25 duties as an advocate for the State. *Id.* The inquiry into which functions are prosecutorial and  
26 thus immune focuses on the nature of the function performed rather than the identity of the  
27 actor who performed it. *Buckley*, 509 U.S. at 269. Nor should any weight be given to  
28 prosecutorial intent in the immunity inquiry. *Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir.



1 1986) (en banc). The issue is not the harm that the conduct may have caused, but the nature of  
2 the conduct for which immunity is claimed. *Buckley*, 509 U.S. at 271. So long as the  
3 prosecutor is acting in his role as an advocate for the State, his actions are protected, even if his  
4 actions are malicious or dishonest. *Imbler*, 424 U.S. at 428.

5 It is well-established that a prosecutor is absolutely immune for initiating a prosecution  
6 and presenting the State’s case. *Id.* at 431. In addition, a prosecutor is absolutely immune  
7 when: deciding whether or not to prosecute, *Roe v. City and County of San Francisco*, 109 F.3d  
8 578, 583 (9th Cir. 1997); preparing and filing an information and a motion for an arrest warrant,  
9 *Kalina v. Fletcher*, 522 U.S. 118, 129 (1997); preparing for trial, *Broam v. Bogan*, 320 F.3d  
10 1023, 1028-29 (9th Cir. 2003); and appearing in court to argue a motion, *Burns v. Reed*, 500  
11 U.S. 478, 492 (1991). A prosecutor’s immunized duties will involve actions preliminary to the  
12 initiation of a prosecution and acts apart from the courtroom. *Imbler*, 424 U.S. at 431 n. 33.

13 Moreover, a prosecutor is absolutely immune from claims that the prosecutor failed to  
14 investigate the accusations against a defendant before filing charges; for the knowing use of  
15 false testimony at trial; and for deciding not to preserve or turn over exculpatory material. *See*  
16 *Broam*, 320 F.3d at 1029-1030 (internal citations omitted) (summarizing several circuit court  
17 opinions upholding absolute prosecutorial immunity in cases where a prosecutor was sued for  
18 deliberately withholding exculpatory evidence or using perjured testimony); *see also Marlowe*  
19 *v. Coakley*, 404 F.2d 70, 70 (9th Cir. 1968) (holding that absolute immunity barred appellant’s  
20 Section 1983 claims against district attorney and his assistants for knowingly and willfully  
21 presenting perjured testimony to a grand jury); *Atkins v. Lanning*, 556 F.2d 485, 488 (9th Cir.  
22 1977) (holding a district attorney was absolutely immune for his failure to verify that the proper  
23 person was named in the indictment). “To be sure, this immunity does leave the genuinely  
24 wronged defendant without civil redress against a prosecutor whose malicious or dishonest  
25 action deprives him of liberty, but the alternative of qualifying a prosecutor’s immunity would  
26 disserve the broader public interest.” *Imbler*, 424 U.S. at 427.

27 Here, all of Plaintiff’s allegations against the County DA Office and Ravitch relate to  
28 the filing of criminal charges against him. The County DA Office and Ravitch’s decision to file

1 criminal charges against Plaintiff is absolutely immune. Therefore, the Court dismisses  
2 Plaintiff's claims against them. Moreover, these claims are dismissed with prejudice because  
3 any further amendment would be futile. *DeSoto*, 957 F.2d at 658. Plaintiff cannot set forth any  
4 facts that would establish the County DA Office's and Ravitch's liability for prosecuting him.

5 **ii. The Sheriff's Office, Freitas, and Walker.**

6 Next the County Defendants argue that the Sherrif's Office and the Sheriff and Assistant  
7 Sheriff Freitas and Walker are considered state actors when they are acting in their law  
8 enforcement capacity and are thus immune under the Eleventh Amendment. However, the  
9 Ninth Circuit ruling in *Brewster v. Shasta County*, 275 F.3d 803, 812 (9th Cir. 2001) forecloses  
10 this argument. In *Brewster*, the Ninth Circuit held that California sheriffs act on behalf of the  
11 county, not the state, when they perform law enforcement duties. *Id.*; *see also Cortez v. County*  
12 *of Los Angeles*, 294 F.3d 1186, 1189-1191 (9th Cir. 2002) (finding that the sheriff acted on  
13 behalf of the County in role as administrator of the county jail).

14 The Court notes that the California Supreme Court disagreed with the Ninth Circuit's  
15 ruling in *Brewster* and determined that California sheriffs act as state officers while performing  
16 such duties. *See Venegas v. County of Los Angeles*, 32 Cal. 4th 820, 839 (2004). District courts  
17 within California have split on the issue of whether *Brewster* remains good law in light of  
18 *Venegas*. *Compare, e.g., Walker v. County of Santa Clara*, 2005 WL 2437037, \*4 (N.D. Cal.  
19 Sept. 30, 2005) *with Mateos-Sandoval v. County of Sonoma*, 942 F. Supp. 2d 890, 900-902  
20 (N.D. Cal. 2013). However, this Court must follow the published decision in *Brewster* "unless  
21 and until overruled by a body competent to do so." *Gonzales v. Arizona*, 677 F.3d 383, 390 n.4  
22 (9th Cir. 2012). The determination of whether an official acts on behalf of a state or a county  
23 for purposes of liability under Section 1983 "is one of federal law." *Streit v. County of Los*  
24 *Angeles*, 236 F.3d 552, 560 (9th Cir. 2001). Although the inquiry is dependent upon an analysis  
25 of the officials functions under state law, as the Ninth Circuit emphasized, it is the federal  
26 court's understanding of the actual function of the official that is determinative. *Weiner v. San*  
27 *Diego County*, 210 F.3d 1025, 1029 (9th Cir. 2000); *see also Streit*, 236 F.3d at 560 (holding  
28 that the appellants erred by urging that only state law controls the determination of whether an

1 official acts on behalf of a state or county and that “federal law provides the rule of decision in  
2 section 1983 actions.”). Although state law may be instructive, “state law does not control  
3 [federal courts] interpretation of a federal statute. *Streit*, 236 F.3d at 560; *see also Mateos-*  
4 *Sandoval v. County of Sonoma*, 942 F. Supp. 2d at 901 (“In determining whether a local officer  
5 or entity is performing a state function, a federal court must conduct its own analysis of state  
6 law.”). Therefore, this Court is not at liberty to disregard *Brewster* based on the California  
7 Supreme Court’s disagreement with its holding.

8 Based on the *Brewster*, the Court finds that Freitas and Walker were acting as county  
9 employees and are thus not immune from suit under the Eleventh Amendment. Therefore, the  
10 County’s motion to dismiss as to Freitas and Walker is denied.

11 **iii. The Sheriff’s Office and the County.**

12 The Sheriff’s Office is an agency of the County and, thus, it is not a proper defendant.  
13 Instead, the County is the proper defendant. *See Vance v. County of Santa Clara*, 928 F. Supp.  
14 993, 996 (N.D. Cal. 1996) (dismissing an agency of the county with prejudice because “[t]he  
15 County is a proper defendant in a § 1983 claim, an agency of the County is not.”). Therefore,  
16 the Court dismisses the Sheriff’s Office with prejudice.

17 Plaintiff does, however, allege sufficient facts to state a claim against the County under  
18 Section 1983. In order for the County to be liable under Section 1983, Plaintiff must  
19 allege that: (1) he had a constitutional right of which he was deprived; (2) the City had a custom  
20 created by those who may be fairly said to determine official policy, which amounted to, at a  
21 minimum, deliberate indifference to Plaintiff’s constitutional rights; and (3) the custom was the  
22 moving force behind the constitutional violation. *See Blair v. City of Pomona*, 223 F.3d 1074,  
23 1079 (9th Cir. 2000); *see also Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992). Upon  
24 review of the complaint, including the attached exhibits, the Court finds that Plaintiff has  
25 sufficiently alleged a claim against the County under Section 1983 for violation of his rights  
26 under the Fourth Amendment. Accordingly, the motion to dismiss is denied with respect to the  
27 County.

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2 **iv. Plaintiff’s State Law Claims.**

3 The County Defendants also move to dismiss Plaintiff’s state law claims. Plaintiff does  
4 not specify in his complaint whether his claims are premised on federal or state law. However,  
5 in response to the County’s motion to dismiss, Plaintiff clarifies that he does not assert any state  
6 law claims. (Opp. to the County Defendants’ Mot. to Dismiss at 9.) Therefore, the County’s  
7 motion to dismiss Plaintiff’s state law claims is denied as moot.

8 **3. The SJRC Defendants’ Motion to Dismiss.**

9 The SJRC Defendants move to dismiss on the grounds that Plaintiff’s complaint against  
10 the SRJC and against Richards and Hawks in their official capacity is barred by the Eleventh  
11 Amendment. As discussed above, the Eleventh Amendment bars suits seeking damages against  
12 the State, including an “arm of the state” such as a state agent or agency, as well as officials  
13 sued in their official capacity. *See, e.g., Durning*, 950 F.2d at 1422-23; *Bair*, 853 F. 2d at 675.  
14 The Ninth Circuit has made clear that “community college districts are dependent  
15 instrumentalities of the state of California,” and are thus immune under the Eleventh  
16 Amendment. *Cerrato v. San Francisco Community College Dist.*, 26 F.3d 968, 972 (9th Cir.  
17 1994). Accordingly, Plaintiff’s claims against the SRJC and against Richards and Hawks in  
18 their official capacity are dismissed with prejudice.

19 The SRJC Defendants also argue that Plaintiff’s claims against Richards and Hawks in  
20 their individual capacity fail because he has not alleged facts sufficient to state any claim. As  
21 discussed above, the Court construes Plaintiff’s complaint as asserting his claims for  
22 constitutional violations as though they were properly brought under Section 1983.

23 With respect to Plaintiff’s claim that his Fourth Amendment rights were violated, the  
24 County makes factual arguments that are not properly considered on a motion to dismiss.

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1 Plaintiff alleges that he was arrested without probable cause and that the officers used excessive  
2 force. Such allegations are sufficient to state a claim.<sup>2</sup>

3 With respect to Plaintiff's claims that are premised on the Fifth Amendment, Plaintiff  
4 does not specify on which provision of the Fifth Amendment he relies. To the extent he is  
5 seeking to bring a claim for violation of due process, he must proceed under the Fourteenth  
6 Amendment, not the Fifth. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001)  
7 ("The Due Process Clause of the Fifth Amendment ... apply only to actions of the federal  
8 government – not to those of state or local governments."). The other provisions of the Fifth  
9 Amendment do not appear applicable to Plaintiff's allegations. Therefore, the Court dismisses  
10 Plaintiff's claims to the extent they are premised on the Fifth Amendment. To the extent  
11 Plaintiff intended to bring a claim for violation of due process pursuant to the Fifth  
12 Amendment, such a claim is dismissed with prejudice because Plaintiff does not name any  
13 federal defendants. To the extent Plaintiff intended to allege a violation of a different provision  
14 of the Fifth Amendment, the Court will provide Plaintiff with leave to amend to clarify the basis  
15 of such a claim.

16 The Sixth Amendment protections do not apply until a criminal prosecution has  
17 commenced. *Rothgery v. Gillespie County, Tex.*, 554 U.S. 191, 198 (2008) ("The Sixth  
18 Amendment right of the 'accused' to assistance of counsel in 'all criminal prosecutions' is  
19 limited by its terms: it does not attach until a prosecution is commenced. .... We have, for  
20 purposes of the right to counsel, pegged commencement to the initiation of adversary judicial  
21 criminal proceedings – whether by way of formal charge, preliminary hearing, indictment,  
22 information, or arraignment.") (internal quotation marks and citations omitted). According to  
23 Plaintiff's allegations, Richards and Hawks were involved with the alleged arrest, not the  
24 prosecution or court proceedings. Therefore, Plaintiff cannot state such a claim against  
25 Richards or Hawks and the Court, thus, dismisses his claims against Richards and Hawks with  
26 prejudice to the extent they are premised on the Sixth Amendment.

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27  
28 <sup>2</sup> The County further argues that Plaintiff does not allege personal participation in  
any of the alleged constitutional violations by Hawks. However, upon review of the  
complaint, the Court finds otherwise.

1           “The Eighth Amendment’s prohibition of ‘cruel and unusual punishments’ applies only  
2 ‘after conviction and sentence.’” *Lee*, 250 F.3d at 686 (quoting *Graham v. Connor*, 490 U.S.  
3 386, 393 & n. 6 (1989)). As Plaintiff alleges, the charges against him were dismissed. Because  
4 Plaintiff was not convicted and sentenced, the Eighth Amendment is inapplicable. Therefore,  
5 the Court dismisses any claims premised on the Eighth Amendment with prejudice.

6           To the extent Plaintiff’s claims are premised on alleged violations of the Fourteenth  
7 Amendment, Plaintiff does not clearly allege the basis for such a claim. Moreover, it is not  
8 clear whether he intended to assert a procedural due process claim or a substantive due process  
9 claim. To the extent he intended to bring a substantive due process claim, such a claim for any  
10 alleged pretrial deprivations of liberty must be brought under the more specific constitutional  
11 amendment – the Fourth Amendment. *See Albright v. Oliver*, 510 U.S. 266, 273-274 (1994);  
12 *see also Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (Fourth Amendment governs  
13 excessive force claims). Therefore, any claim for violation of substantive due process under the  
14 Fourteenth Amendment is dismissed with prejudice.

15           However, it is not clear whether Plaintiff also intended to bring a procedural due process  
16 claim under the Fourteenth Amendment. “A section 1983 claim based upon procedural due  
17 process . . . has three elements: (1) a liberty or property interest protected by the Constitution;  
18 (2) a deprivation of the interest by the government; (3) lack of process.” *Portman v. County of*  
19 *Santa Clara*, 995 F.2d 898, 904 (9th Cir. 1993). The SJRC Defendants argue that Plaintiff  
20 failed to state a claim for a procedural due process claim. Therefore, the Court will not address  
21 this issue at this time. If Plaintiff elects to file an amended complaint, Plaintiff shall clarify the  
22 factual basis of any claim premised on a violation of procedural due process under the  
23 Fourteenth Amendment. Plaintiff shall specify what liberty or property interest of which he  
24 alleges he was deprived and what process he alleges that he did not receive.

25           Finally, the SRJC Defendants move to “dismiss” Plaintiff’s prayer for attorneys’ fees,  
26 punitive damages, and injunctive relief. Although such a request is more properly brought  
27 pursuant to a motion to strike, the Court will address the substance of whether Plaintiff may  
28 obtain attorneys’ fees, punitive damages, and/or injunctive relief because Plaintiff had an

1 opportunity to respond to the SRJC Defendants' arguments. A *pro se* non-attorney party is not  
2 entitled to attorneys' fees under 42 U.S.C. § 1988. *Kay v. Ehrler*, 499 U.S. 432, 435 (1991).  
3 Accordingly, the Court strikes Plaintiff's prayer for attorneys' fees. Because the Court has  
4 dismissed Plaintiff's claims under Section 1983 against the SRJC with prejudice, the Court need  
5 not address Plaintiff's prayer for punitive damages against the SRJC.

6 Plaintiff seeks an injunction enjoining Defendants from contacting him for any reason  
7 unless a Defendant personally witnesses Plaintiff commit a felony. Plaintiff "must demonstrate  
8 standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw*  
9 *Environmental Services (TOC), Inc.*, 528 U.S. 167, 185 (2000) (citing *City of Los Angeles v.*  
10 *Lyons*, 461 U.S. 95, 109 (1983) (notwithstanding the fact that plaintiff had standing to pursue  
11 damages, he lacked standing to pursue injunctive relief)). When a plaintiff seeks prospective  
12 relief, in order to establish standing, he or she must show that there is "a likelihood of future  
13 injury." *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000) (internal quotations and  
14 citations omitted); *see also Gest v. Bradbury*, 443 F.3d 1177, 1181 (9th Cir. 2006) (plaintiff  
15 must show that he or she is "realistically threatened by a *repetition* of the violation") (internal  
16 citations and quotations omitted, emphasis in original). "Past exposure to illegal conduct does  
17 not itself show a present case or controversy regarding injunctive relief if unaccompanied by  
18 any continuing, present adverse effects." *Lujan*, 504 U.S. at 564 (internal quotations omitted).  
19 Here, Plaintiff has not alleged facts showing that he has Article III standing to pursue injunctive  
20 relief. *See, e.g., Jenkins v. Apple, Inc.*, 2011 WL 2619094 at \*2 (N.D. Cal. July 1, 2011); *cf.*  
21 *Cattie v. Wal-Mart Stores*, 504 F. Supp. 2d 939, 951 (S.D. Cal. 2007). Moreover, even if he  
22 could allege facts showing that a likelihood of future injury, he does not seek a proper  
23 injunction to address his alleged constitutional deprivations. Accordingly, the Court strikes  
24 Plaintiff's prayer for injunctive relief.

25 **C. Plaintiff's Motion to Disqualify.**

26 Plaintiff seeks to disqualify all counsel for all defendants on the grounds that they have  
27 not provided admissible evidence of their authority to represent defendants or of their authority  
28 to practice law in this Court. Plaintiff does not provide any authority in support of his motion.

1 Nor does he submit any evidence that would tend to suggest any of the Defendants' counsel are  
2 not licensed attorneys or are practicing without the consent of their clients. In the absence of  
3 any evidence of wrongdoing, there is no basis to disqualify counsel. Accordingly, the Court  
4 denies Plaintiff's motion to disqualify.

5 **CONCLUSION**

6 For the foregoing reasons, the Court hereby (1) GRANTS IN PART and DENIES IN  
7 PART the SRJC Defendants' motion to dismiss, (2) GRANTS IN PART and DENIES IN  
8 PART the County Defendants' motion to dismiss, (3) GRANTS the Sonoma Court Defendants'  
9 motion to dismiss, and (4) DENIES Plaintiff's motion to disqualify. Plaintiff's claims against  
10 the Sonoma Court Defendants, the County DA's Office, Ravitch, the Sheriff's Office, the SJRC,  
11 and Richards and Hawks in their official capacity are dismissed with prejudice. The Court also  
12 dismisses with prejudice Plaintiff's claims to the extent they are premised on the Sixth or Eighth  
13 Amendments.

14 The Court denies the motions to dismiss Plaintiff's Section 1983 claim for violation of  
15 the Fourth Amendment against the County, Freitas, Walker, and Richards and Hawks in their  
16 individual capacity.

17 To the extent Plaintiff seeks to bring a claim under 42 U.S.C. §§ 1985, 1986, a Section  
18 1983 claim for a deprivation of procedural due process under the Fourteenth Amendment or for  
19 violation of the Fifth Amendment against Freitas, Walker, or Richards and Hawks in their  
20 individual capacity, the Court is providing Plaintiff with leave to amend. Plaintiff shall file an  
21 amended complaint, if any, by no later than March 21, 2014.

22 **IT IS SO ORDERED.**

23  
24 Dated: February 27, 2014

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE



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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

GEORGE DANIEL,

Plaintiff,

v.

SANTA ROSA JUNIOR COLLEGE et al,

Defendant.

Case Number: CV13-02426 JSW

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 27, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

George Daniel  
c/o Jeff Koors  
217 Barnett Street  
Santa Rosa, CA 95407

Dated: February 27, 2014



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk