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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ANTHONY LOCKHART,
Plaintiff,
v.
GARY L. SHERRER,
Defendant.

Case No. [17-cv-03668-JCS](#) (PR)

ORDER OF DISMISSAL

INTRODUCTION

Plaintiff, who consented to magistrate judge jurisdiction (Dkt. No. 7), alleges in this 42 U.S.C. § 1983 action that his defense attorney and the trial judge are conspiring to deprive him of his constitutional rights to a fair trial. He asks this Court to remove his “lawyer from the case” and transfer his proceedings to a district in which his rights will be respected.

Plaintiff asks this Court to interfere in ongoing state proceedings. Because precedent commands otherwise, this Court must deny plaintiff’s request and dismiss his suit.

DISCUSSION

A. Standard of Review

In its initial review of this pro se complaint, this Court must dismiss any claim that is frivolous or malicious, or fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

1 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a
2 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
3 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
4 plausibility when the plaintiff pleads factual content that allows the court to draw the
5 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
6 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
7 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
8 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754–55
9 (9th Cir. 1994).

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

14 **B. Legal Claims**

15 Plaintiff alleges his attorney is conspiring with the trial court “to have a hearing for
16 public safety, but they are really go[ing] to have a bench trial, violating my right to a jury
17 trial.” (Compl. at 3.) From these allegations, the Court infers that plaintiff is facing
18 ongoing criminal proceedings in state court.

19 There are at least two reasons to dismiss this suit.

20 First, his claims for injunctive relief, the only relief he seeks, cannot proceed.
21 Under principles of comity and federalism, a federal court should not interfere with
22 ongoing state criminal proceedings by granting injunctive or declaratory relief absent
23 extraordinary circumstances. *See Younger v. Harris*, 401 U.S. 37, 43-54 (1971). More
24 specifically, federal courts should not enjoin pending state criminal prosecutions absent a
25 showing of the state’s bad faith or harassment, or a showing that the statute challenged is
26 “flagrantly and patently violative of express constitutional prohibitions.” *Id.* at 46, 53-54.
27 *Younger* abstention is required when (1) state proceedings, judicial in nature, are pending;
28 (2) the state proceedings involve important state interests; and (3) the state proceedings

1 afford adequate opportunity to raise the constitutional issue. *See Middlesex County Ethics*
2 *Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982).

3 Injunctive relief is available only upon “showing irreparable injury.” *Younger*, 401
4 U.S. at 46. However, “[c]ertain types of injury, in particular, the cost, anxiety, and
5 inconvenience of having to defend against a single criminal prosecution, could not by
6 themselves be considered ‘irreparable’ in the special legal sense of that term. Instead, the
7 threat to the plaintiff’s federally protected rights must be one that cannot be eliminated by
8 his defense against a single criminal prosecution.” *Id.*

9 Abstention is appropriate here because all of the elements of *Younger* are present.
10 As to the first *Younger* element, the record shows that plaintiff’s state court proceedings
11 are ongoing. As to the second *Younger* element, the Supreme Court has held that “a proper
12 respect for state functions,” such as the ongoing criminal proceedings we see here, is an
13 important issue of state interest. *See Preiser v. Rodriguez*, 411 U.S. 475, 491-92 (1973)
14 (quoting *Younger*, 401 U.S. at 44). As to the third prong of *Younger*, the Court finds no
15 reason that plaintiff cannot pursue his claims in state court, such as by filing a motion to
16 change counsel, or a motion to proceed pro se.

17 Furthermore, any interference by this Court in the state court proceedings would
18 cause results disapproved of by *Younger*. *SJSVCCPAC v. City of San Jose*, 546 F.3d
19 1087, 1092 (9th Cir. 2008).

20 A second reason to dismiss the suit is that the sole defendant in this action,
21 plaintiff’s attorney, is not subject to suit under section 1983. His attorney, whether he is a
22 private attorney or a public defender, are not liable under section 1983 because he is not a
23 state actor. Private actors are not liable under section 1983, which provides a means to
24 seek relief against state actors. *See Gomez v. Toledo*, 446 U.S. 635, 640 (1980). A state-
25 appointed defense attorney “does not qualify as a state actor when engaged in his general
26 representation of a criminal defendant.” *Polk County v. Dodson*, 454 U.S. 312, 321
27 (1981). *Polk County* “noted, without deciding, that a public defender may act under color
28 of state law while performing certain administrative [such as making hiring and firing

1 decisions], and possibly investigative, functions.” *Georgia v. McCollum*, 505 U.S. 42, 54
2 (1992) (citing *Polk County*, 454 U.S. at 325.) Under these standards, plaintiff’s allegations
3 categorically fail to state claims for relief under section 1983.

4 Accordingly, plaintiff’s claims are DISMISSED without prejudice.


5 If plaintiff believes he can state claims for relief despite the barriers to suit
6 described above, or if he believes he can overcome these barriers, he may file an amended
7 complaint. The amended complaint must include the caption and civil case number used
8 in this order (17-03668 JCS (PR)) and the words FIRST AMENDED COMPLAINT on the
9 first page. Because an amended complaint completely replaces the previous complaints,
10 plaintiff must include in his amended complaint all the claims he wishes to present and all
11 of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.
12 1992). Any claims not raised in the amended complaint will be deemed waived. Plaintiff
13 may not incorporate material from the prior complaint by reference.

14 **CONCLUSION**

15 This federal civil rights action is DISMISSED without prejudice. The Clerk shall
16 enter judgment in favor of defendant, and close the file.

17 **IT IS SO ORDERED.**

18 **Dated:** July 27, 2017

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21 JOSEPH C. SPERO
22 Chief Magistrate Judge
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Case No. [17-cv-03668-JCS](#)

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 July 27, 2017, 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.

Michael Anthony Lockhart ID: ALU-772
Glenn Dyer Detention Facility
550 6th Street
Oakland, CA 94607

Dated: July 27, 2017

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO