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United States District Court
Northern District of California

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

MANUEL SOLORIO,
Plaintiff,

v.

ERIN LOBACK, ET AL.
Defendant.

Case No. 18-cv-03596-CRB

**ORDER DISMISSING FIRST
AMENDED COMPLAINT WITH
LEAVE TO AMEND**

Pro se Plaintiff Manuel Solorio (“Solorio”) alleges a general violation of his constitutional rights based on allegations that (1) Alameda County District Attorneys, Erin Loback and Nancy O’Malley, inappropriately refused to bring criminal charges against Solorio’s sister, Isabel Solorio, (2) Deputy District Attorney Loback and District Attorney Inspector Jim Taranto failed to adequately investigate his claim against Isabel Solorio, and (3) the County of Alameda and attorneys from the Office of the County Counsel for the County of Alameda, Donna Ziegler and Scott Feudale, failed to provide Solorio with documents from the Alameda County Assessor’s Office. Dkt. 15. Defendants move to dismiss. Dkt. 18.

For the reasons that follow, the Court finds that all the individual Defendants are entitled to immunity and that Solorio does not state a plausible claim for relief against the County of Alameda. The Court thus dismisses the First Amended Complaint with leave to amend.

I. BACKGROUND

Solorio claims that District Attorneys O’Malley and Loback violated his constitutional rights by declining to prosecute his sister, Isabel Solorio, for allegedly

1 defrauding him in connection with the distribution of assets from the estate of their father,
2 Luis Solorio.¹ See Dkt. 15 at 4, 11, 26.² He also alleges that Alameda County, through its
3 Assessor’s Office and County Attorneys, Ziegler and Feudale, violated his constitutional
4 rights by failing to provide him with public documents. See id. at 2, 20. Solorio asserts
5 that the allegedly inappropriately-withheld public documents substantiate his belief that his
6 sister defrauded him because, he contends, they reveal that his sister forged his father’s
7 signature on his father’s living trust. Id. at 11, 20, 24.

8 The trust at issue was executed on December 23, 2015. See id. at 42–51, 73. The
9 trust’s sole asset was Luis’s house, in which Solorio lived prior to Luis’s death. See id. at
10 16. Isabel was named as trustee. See id. at 45–46. Under the trust’s terms, upon Luis’s
11 death, Isabel was directed to distribute all trust assets in equal portions to Solorio and his
12 four siblings. See id. at 46.

13 After Luis’s death, Isabel, as trustee, began efforts to remove Solorio from Luis’s
14 house so the estate could be liquidated. See id. at 60–62. Solorio resisted these efforts and
15 argues that Isabel was not legally authorized to administer the trust because she forged
16 Luis’s signature on the trust document. Id. at 11, 20, 24. He alleges he was evicted from
17 his deceased father’s house on July 3, 2017, when Isabel changed the locks. Id. at 16.
18 Solorio called the police, but the responding officer refused to give Solorio access to the
19 home because Isabel presented the officer with an eviction notice. Id. Solorio alleges that
20 Isabel never procured a valid eviction notice and only showed the responding officer “a
21 notice of termination of possession.” Id. Solorio asserts that due to his sister’s actions he
22 is homeless. Id. at 11. Solorio received \$88,000 from the trust but believes that he is owed
23 more. Id. at 27, 71.

24 Solorio contends that he requested that the Alameda County’s Assessor’s Office
25 provide him with real estate documents that Luis signed and that his requests were denied.

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27 ¹ Isabel Solorio is not a party to this case.
28 ² For ease of reference, the pages in Solorio’s Amended Complaint are numbered as designated at
the top of each page by the Court’s electronic filing system, rather than the page number assigned
by Solorio.

1 Id. at 2, 14, 20. In June 2017, he filed a complaint with the Alameda County District
2 Attorney’s Office requesting criminal prosecution of Isabel for real estate fraud. See id. at
3 17, 67. The case was assigned to Loback, who allegedly told Solorio that she “was going
4 to do her very best to help [him].” Id. at 4. Loback did not file charges. Id. Instead,
5 Loback explained to Solorio that “a thorough review of [Solorio’s] file” showed that there
6 was “insufficient evidence to proceed with criminal charges.” Id. Solorio contends that
7 Loback “closed his case within 24 hours without investigating the Assessor’s Office.” Id.

8 Solorio alleges that had Loback properly investigated and prosecuted Isabel for real
9 estate fraud, the family home would not have been “illegally” sold and Solorio would not
10 be homeless. Id. at 26. Solorio further alleges that Taranto, a District Attorney Inspector,
11 promised him a meeting with District Attorney O’Malley but thereafter declined to set up
12 such a meeting and “covered everything up to protect Erin Loback.” Id. at 4, 25. As to
13 O’Malley, Solorio alleges that “the buck stops at [her] desk” because she is District
14 Attorney and that she failed to protect his rights despite protecting other individuals’ rights
15 in prior cases. Id. at 2, 15. Solorio then sued Loback, O’Malley, Taranto, and the City of
16 Oakland. Dkt. 1.

17 On July 30, 2018, County Counsel, Ziegler and Feudale, in their role as defense
18 counsel for O’Malley, Loback, and Taranto, moved to dismiss Solorio’s Complaint. See
19 Dkt. 7.

20 Solorio then filed an Amended Complaint. Dkt. 15. This Complaint again names
21 O’Malley, Loback, and Taranto. Id. at 1. It also names Ziegler and Feudale, as well as the
22 Assessor’s Office. Id. It no longer names the City of Oakland. See id. Solorio seeks
23 \$5,000,000 in damages. Id. at 30.

24 Defendants have now filed a second Motion to Dismiss. Dkt. 18.

25 **II. LEGAL STANDARD**

26 A complaint must plead “enough facts to state a claim to relief that is plausible on
27 its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007); see also Fed. R. Civ. P.
28 8(a)(2). A claim is plausible “when the plaintiff pleads factual content that allows the

1 court to draw the reasonable inference that the defendant is liable for the misconduct
2 alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009); see also Fed. R. Civ. P. 12(b)(6).
3 When evaluating a motion to dismiss, a court “must presume all factual allegations of the
4 complaint to be true and draw all reasonable inferences in favor of the nonmoving party.”
5 Usher v. City of L.A., 828 F.2d 556, 561 (9th Cir. 1987). Dismissal may be based on
6 either “the lack of a cognizable legal theory or the absence of sufficient facts alleged under
7 a cognizable legal theory.” Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir.
8 1990).

9 While these standards apply to all pleadings, a pro se complaint “is to be liberally
10 construed, and . . . however inartfully pleaded, must be held to less stringent standards than
11 formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (internal
12 quotation marks and citation omitted). If a district court grants a motion to dismiss, it
13 “should liberally allow a party to amend its pleading.” Sonoma Cnty. Ass’n of Retired
14 Emps. v. Sonomy Cnty., 708 F.3d 1109, 1117 (9th Cir. 2013) (citing Fed. R. Civ. P.
15 15(a)). A court may deny “leave to amend only if there is strong evidence of undue delay,
16 bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies
17 by amendments previously allowed, undue prejudice to the opposing party by virtue of the
18 amendment, [or] futility of amendment, etc.” Id. (internal quotation marks omitted).

19 **III. DISCUSSION**

20 Solorio brings claims against employees of the Alameda County District Attorney’s
21 Office and the Alameda County Counsel’s Office. He also brings a claim against the
22 County of Alameda.³ In response, Defendants argue that each individual Defendant is

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³ Solorio names as a defendant “the Assessor’s Office of Oakland, CA,” but Defendants note that, because the County Assessor’s Office is in Oakland and the City of Oakland does not have a separate assessor’s office, Solorio intends to refer to the Alameda County Assessor’s Office. Dkt. 18 at i n.1. Further, Defendants contend that the Assessor’s Office is not a separate public entity, but rather a political subdivision of the County, and so the County of Alameda is the proper Defendant. Id. Solorio does not challenge these characterizations in his response to the motion to dismiss. Dkt. 23. The Court thus takes Solorio’s reference to “the Assessor’s Office of Oakland, CA” to refer to the Alameda County Assessor’s Office, and, in consequence, understands the institutional defendant to be the County of Alameda.

1 entitled to either absolute or qualified immunity and that Solorio does not state a plausible
2 claim to relief against the County of Alameda. Defendants are correct.

3 **A. Immunity**

4 The doctrines of absolute and qualified immunity shield government employees
5 from liability for actions performed within the employee’s official capacity. Prosecutorial
6 immunity grants prosecutors “absolute immunity” from civil liability for “prosecutorial
7 functions,” but does not extend to “administrative, legislative, or executive functions.”
8 Forrester v. White, 484 U.S. 219, 226 (1988). By contrast, “[t]he doctrine of qualified
9 immunity protects government officials ‘from liability for civil damages insofar as their
10 conduct does not violate clearly established statutory or constitutional rights of which a
11 reasonable person would have known’” for administrative, legislative, or executive
12 functions. Pearson v. Callahan, 555 U.S. 223, 231 (2009) (quoting Harlow v. Fitzgerald,
13 457 U.S. 800, 818 (1982)).

14 Defendants argue that each individual defendant is entitled to either absolute or
15 qualified immunity. Specifically, Defendants argue that: (1) the District Attorneys,
16 Loback and O’Malley, are entitled to absolute prosecutorial immunity for declining to
17 bring charges against Isabel,⁴ Dkt. 18 at 4–6; (2) that District Attorney Loback and District
18 Attorney Inspector Taranto are entitled to qualified immunity for allegedly conducting an
19 inadequate investigation, id. at 10; and (3) that the County Attorneys, Ziegler and Feudale,

21 ⁴ Solorio does not specify whether his suit is against the individual defendants in their individual
22 or official capacities. See generally Dkt. 15. However, because Solorio seeks only damages,
23 rather than injunctive relief, the Court concludes that the Complaint is levied against the individual
24 defendants in their individual capacities. Price v. Akaka, 928 F.2d 824, 828 (9th Cir. 1990) (“By
25 seeking damages under § 1983, [a] Complaint indicates that the intended defendants are . . . [being
26 sued] as individuals.”); see also Shoshone-Bannock Tribes v. Fish & Game Comm’n, Idaho, 42
27 F.3d 1278, 1284 (9th Cir. 1994) (“Where state officials are named in a complaint which seeks
28 damages under 42 U.S.C. § 1983, it is presumed that the officials are being sued in their individual
capacities Any other construction would be illogical where the complaint is silent as to
capacity, since a claim for damages against state officials in their official capacities is plainly
barred.”).

Defendants argue that if sued in their official capacity Loback and O’Malley are entitled to
Eleventh Amendment immunity. Dkt. 18 at 4–6. Because Solorio’s claims are properly construed
as against Defendants in their individual capacity, the Court need not address that argument.

1 are entitled to absolute immunity for their actions as defense counsel, id. at 7. Defendants
2 are correct.

3 Because the immunity inquiry is functional, the following analysis is grouped by
4 Defendants’ alleged actions, rather than their titles. See Forrester, 484 U.S. at 224.⁵

5 **1. Claim against Loback and O’Malley for declining to prosecute.**

6 Solorio claims that District Attorneys Loback and O’Malley violated his rights by
7 failing to criminally charge his sister. Dkt. 15 at 4, 11. 26. Defendants respond that
8 Loback and O’Malley are entitled to absolute prosecutorial immunity. Dkt. 18 at 6–7.
9 Defendants are correct.

10 Prosecutors are absolutely immune from damages for activities that are “intimately
11 associated with the judicial phase of the criminal process,” such as “initiating a prosecution
12 and in presenting the State’s case[.]” Imbler v. Pachtman, 424 U.S. 409, 430–31 (1976).
13 The Ninth Circuit has held that prosecutors are entitled to absolute immunity from
14 damages for their decision not to initiate a criminal prosecution because the decision
15 whether to charge a person with a crime “may well be the most critical determination of
16 the entire prosecutorial process.” Roe v. City & Cnty. of S.F., 109 F.3d 578, 583 (9th Cir.
17 1997). This is dispositive as to Solorio’s claim that Loback and O’Malley failed to initiate
18 a criminal prosecution: That decision was, under Ninth Circuit precedent, clearly
19 “associated with the judicial phase of the criminal process,” Imbler, 424 U.S. at 430-31,
20 and thus Loback and O’Malley are entitled to absolute prosecutorial immunity for this
21 action.

22 **2. Claim against Ziegler and Feudale for failing to assist Solorio
23 procure documents.**

24 Solorio next claims that County Attorneys Ziegler and Feudale failed to help him
25 procure documents from the Alameda County Assessor’s Office. Dkt. 15 at 2. Defendants
26 respond that Solorio’s claim against Ziegler and Feudale is barred because both are entitled

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28 ⁵ Loback appears twice because Solorio sues him for failing to prosecute Isabel Solorio and for
conducting an inadequate investigation.

1 to absolute immunity for any act of advocacy they performed as defense counsel. Dkt. 18
2 at 7–10. Defendants are correct.

3 The Ninth Circuit has broadened the doctrine of absolute prosecutorial immunity to
4 apply “[w]hether the government attorney is representing the plaintiff or the defendant, or
5 is conducting a civil trial, criminal prosecution or an agency hearing [Provided that]
6 the government attorney is performing acts ‘intimately associated with the judicial phase’
7 of the litigation[.]” Fry v. Melarango, 939 F.2d 832, 837 (9th Cir. 1991) (quoting Imbler,
8 424 U.S. at 430). Solorio’s sole allegation against Ziegler and Feudale targets an act taken
9 by Ziegler and Feudale as opposing counsel defending against Solorio’s original
10 complaint: that, as defense counsel for Loback and O’Malley, they refused to help him
11 procure real estate documents from the Assessor’s Office. Dkt. 15 at 2. Such an act is
12 “intimately associated with the judicial phase of the litigation,” Fry, 939 F.2d at 837
13 (internal quotation marks omitted), thus both Ziegler and Feudale are entitled to absolute
14 immunity. See id.

15 **1. Claim against Loback and Taranto for conducting an inadequate**
16 **investigation.**

17 Solorio argues that District Attorney Loback and District Attorney Inspector
18 Taranto violated his rights by failing to conduct an adequate investigation of his complaint.
19 Dkt. 15 at 6, 11. Defendants argue that Loback and Taranto are entitled to qualified
20 immunity because they did not deprive Solorio of a clearly established right. Dkt. 18 at
21 10–13. Defendants are correct.

22 Qualified immunity protects “government officials . . . from liability for civil
23 damages insofar as their conduct does not violate clearly established statutory or
24 constitutional rights of which a reasonable person would have known.” Harlow, 457 U.S.
25 at 818. For a right to be considered “clearly established,” the law at the time of the event
26 must have been sufficiently settled such that “it would be clear to a reasonable officer that
27 his conduct was unlawful in the situation he confronted.” Saucier v. Katz, 533 U.S. 194,
28 202 (2001).

1 Even if a constitutional violation could be shown under the facts alleged, Loback
2 and Taranto would nevertheless be entitled to qualified immunity because there is no
3 “clearly established” rule that an inadequate investigation is unconstitutional. Indeed, the
4 Ninth Circuit had held that a police officer is not liable for failing to investigate criminal
5 allegations or for conducting an inadequate investigation into such allegations, absent a
6 showing that the omission or inadequacy resulted in the deprivation of a constitutional
7 right. Gomez v. Whitney, 757 F.2d 1005, 1005–06 (1985) (per curiam). Thus, even if the
8 investigation was inadequate, a reasonable officer would not have thought that it violated
9 Solorio’s constitutional rights. Accordingly, Loback and Taranto are entitled to qualified
10 immunity for conducting an allegedly inadequate investigation.

11 **B. Claim against the County of Alameda.**

12 Solorio contends that the Alameda County Assessor’s Office violated his
13 constitutional rights by denying his request for access to real estate documents. Dkt. 15 at
14 2, 20. Defendants do not dispute that the Assessor’s Office is appropriately construed as a
15 municipality for the purpose of this case. See Dkt. 18 at 16. Defendants argue that Solorio
16 fails to allege facts necessary to find a municipality liable under § 1983.⁶ Defendants are
17 correct.

18 A municipality may not be held liable under § 1983 solely because it employs a
19 tortfeasor. Monell v. Dep’t of Soc. Servs. of New York, 436 U.S. 658, 691 (1978).
20 Rather, “the actions of individual employees can support liability against a municipality
21 under § 1983 only if those employees were acting pursuant to an official municipal
22 policy.” Webb v. Sloan, 330 F.3d 1158, 1164 (9th Cir. 2003). A municipality may be

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24 ⁶ Solorio’s Amended Complaint refers to 42 U.S.C. § 1981. Dkt. 15 at 1. However, § 1981
25 provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in
26 every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens.” 42
27 U.S.C. § 1981. Solorio’s claim does not sound in racial discrimination. See generally Dkt. 15.
28 Rather, his claims more naturally fit within 42 U.S.C. § 1983, which provides a cause of action
against those who “under color of [law]” deprive another of the “rights, privileges, or immunities
secured by the Constitution and laws.” Id. Indeed, Defendants’ Motion to Dismiss characterizes
Solorio’s claims as brought under § 1983, Dkt. 18 at 5, and Solorio does not challenge that
characterization in his response. See Dkt. 23. Thus, the Court concludes that Solorio’s claims
should be taken to arise under § 1983, not § 1981.

1 liable for a single, isolated violation only if “the person causing that violation has final
2 policymaking authority.” Id.; see also Pembaur v. City of Cincinnati, 475 U.S. 469, 483
3 (1986).

4 Even if the Court accepted that Solorio had a cognizable legal right to the
5 documents he sought—a claim for which he provides no legal basis—Solorio does not
6 demonstrate that the denial was pursuant to either a policy or a policymaker’s decision.
7 See Dkt. 15 at 14, 20. Thus Solorio does not allege sufficient facts to state a plausible
8 claim for relief against the County of Alameda.

9 **IV. CONCLUSION**

10 Accordingly, the Court GRANTS Defendants’ Motion to Dismiss with leave to
11 amend. Should Solorio wish to amend, he may file an amended complaint on or before
12 forty-five days from the entry of this order.

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14 **IT IS SO ORDERED.**

15 Dated: November 13, 2018



16 CHARLES R. BREYER
17 United States District Judge