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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICARDO ZEPEDA,  
Plaintiff,  
v.  
WALTER N. SCHULD, et al.,  
Defendants.

Case No. [4:13-cv-05761-KAW](#)

**ORDER DISMISSING THIRD AND  
FOURTH CLAIMS PURSUANT TO 28  
U.S.C. 1915**

Re: Dkt. No. 87

On July 17, 2017, Plaintiff Ricardo Zepeda filed his third amended complaint. Plaintiff filed this lawsuit pursuant to the *in forma pauperis* statute, so the Court must dismiss claims that fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2).

For the reasons set forth below, the Court dismisses the third and fourth causes of action with prejudice, because any amendment would be futile.

**I. BACKGROUND**

Plaintiff Ricardo Zepeda alleges civil rights violations in connection with various contacts with law enforcement agencies and personnel, including the San Pablo Police Department, the Richmond Police Department, and the Contra Costa County Sheriff’s Department.

In dismissing the second amended complaint with leave to amend, the Court advised Plaintiff that the third amended complaint was his final opportunity to amend, and that “any future dismissals [would] be with prejudice, which would likely result in his case being dismissed.” (Dkt. No. 84 at 12.) Plaintiff was also reminded that the third amended complaint would supersede all previous complaints and must be complete in itself without reference to the prior or superseded pleading, and the undersigned again referred Plaintiff to the Federal Pro Bono Project’s Help Desk to obtain free legal assistance. *Id.*



1 (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). "A pro se complaint, however inartfully  
2 pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers . . . ."  
3 *Estelle*, 429 U.S. at 106 (internal citations omitted). Generally, if the court dismisses the  
4 complaint, it should grant leave to amend even if no request to amend is made "unless it  
5 determines that the pleading could not possibly be cured by the allegation of other facts." *Lopez*  
6 *v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

### 7 **III. DISCUSSION**

#### 8 **A. Third Cause of Action for violations of § 1983**

9 Plaintiff's third cause of action alleges Fourth amendment violations, including unlawful  
10 seizure and arrest, stemming from the May 2013 incident at Plaintiff's residence, against Deputy  
11 Sheriff Dale Hadly and Does 11-20. (TAC ¶ 30.) A plaintiff cannot recover damages under §1983  
12 for a claim involving an unlawful arrest, imprisonment, or conviction unless or until the  
13 conviction has been vacated or set aside. *See, e.g., Heck v. Humphrey*, 512 U.S. 477, 486-87  
14 (1994) (the question is "whether judgment in favor of a § 1983 plaintiff would necessarily imply  
15 invalidity of [a plaintiff's] conviction or sentence"); *Wallace v. Kato*, 549 U.S. 384, 393-94  
16 (2007). Here, the lawsuit was previously stayed pending the outcome of Plaintiff's criminal case  
17 stemming from the May 6, 2013 incident, because a conviction would require the dismissal of the  
18 claim. *See Wallace*, 549 U.S. at 394 ("If the plaintiff is ultimately convicted, and if the stayed civil  
19 suit would impugn that conviction, *Heck* will require dismissal; otherwise, the civil action will  
20 proceed, absent some other bar to suit.") Plaintiff's third cause of action alleges constitutional  
21 violations related to the May 6, 2013 incident, including the constitutionality of the searches  
22 conducted and the seizure of personal property. (*See* TAC ¶ 30.) Plaintiff was convicted of  
23 misdemeanor gun charges, which bars the third cause of action, because a civil damages claim that  
24 undermines a valid, underlying conviction or sentence is "not cognizable under § 1983." *Heck*,  
25 512 U.S. at 487.

26 Accordingly, Plaintiff's third cause of action is barred by *Heck*, and must be dismissed  
27 pursuant to 28 U.S.C. § 1915(e)(2), because he fails to state a claim upon which relief can be  
28 granted. While the dismissal is technically without prejudice, the claim will become actionable

1 only in the event that the conviction is overturned. Thus, at this juncture, Plaintiff is not granted  
2 leave to amend.

3 **B. Fourth Cause of Action for Malicious Prosecution**

4 Plaintiff's fourth cause of action alleges malicious prosecution against Deputy District  
5 Attorneys Jon F. Yamaguchi and Steve Baldwin of Contra Costa County. (TAC ¶ 31.)  
6 Specifically, Plaintiff alleges that he was arrested and prosecuted in 2014 in connection with the  
7 execution of the May 6, 2013 search warrant in retaliation for filing the instant lawsuit. (TAC ¶¶  
8 20, 23, 25-27, 30.) Plaintiff's criminal case resolved when he pled guilty to a misdemeanor gun  
9 charge and was sentenced to one year of court probation. (TAC ¶ 27.) "One element that must be  
10 alleged and proved in a malicious prosecution action is termination of the prior criminal  
11 proceeding in favor of the accused." *Heck*, 512 U.S. at 484. Here, Plaintiff was convicted of a  
12 crime in connection with the prosecution after he was held over for trial on a felony charge for  
13 felon in possession of a firearm. (TAC ¶¶ 26-27.) Thus, the prosecution was not malicious,  
14 because it did not terminate in his favor.

15 Moreover, the Court notes that, based on the facts alleged, the prosecutors are immune  
16 from suit based on general prosecutorial immunity principles. Prosecutors are absolutely immune  
17 from liability in § 1983 suits brought against prosecutorial actions that are "intimately associated  
18 with the judicial phase of the criminal process," due to concerns that the harassment of  
19 "unfounded litigation" could adversely affect the exercising of independent judgment. *Imbler v.*  
20 *Pachtman*, 424 U.S. 409, 423, 428, 430 (1976); *see also Van de Kamp v. Goldstein*, 555 U.S. 335,  
21 (2009). Plaintiff's allegations are limited to his prosecution in Contra Costa County Superior  
22 Court, including plea negotiations. (*See* TAC ¶ 26.) Those are prosecutorial actions that are  
23 intimately associated with the judicial phase of the criminal process, and, therefore, subject to  
24 absolute immunity.

25 Accordingly, Plaintiff's fourth cause of action for malicious prosecution is barred by both  
26 *Heck* and because the deputy district attorneys enjoy absolute immunity from liability.  
27 Accordingly, the fourth cause of action against the deputy district attorneys is dismissed with  
28 prejudice due to prosecutorial immunity.

1 **IV. CONCLUSION**

2 In light of the foregoing, the Court dismisses claims three and four of the third amended  
3 complaint pursuant to 28 U.S.C. § 1915(e)(2) without leave to amend, because further amendment  
4 would be futile. Specifically, Plaintiff's third cause of action is dismissed without prejudice, and  
5 the fourth cause of action is dismissed with prejudice.

6 IT IS SO ORDERED.

7 Dated: October 5, 2017

8   
KANDIS A. WESTMORE  
9 United States Magistrate Judge