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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANE MYRON SCOTT,
Plaintiff,
v.
DALE BRADFORD LOHMAN,
Defendant.

Case No. [16-cv-06977-PJH](#)

ORDER OF DISMISSAL

Re: Dkt. Nos. 12, 13

Plaintiff, a state prisoner, filed a pro se complaint that was dismissed with leave to amend. He has filed an amended complaint.

DISCUSSION

STANDARD OF REVIEW

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

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

1 factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]
2 to relief' requires more than labels and conclusions, and a formulaic recitation of the
3 elements of a cause of action will not do. . . . Factual allegations must be enough to
4 raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550
5 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state
6 a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme
7 Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal
8 conclusions can provide the framework of a complaint, they must be supported by factual
9 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."
11 *Ashcroft 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
13 elements: (1) that a right secured by the Constitution or laws of the United States was
14 violated, and (2) that the alleged deprivation was committed by a person acting under the
15 color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **LEGAL CLAIMS**

17 Plaintiff seeks relief regarding his criminal conviction.

18 "Federal law opens two main avenues to relief on complaints related to
19 imprisonment: a petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the
20 Civil Rights Act of 1871, Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges
21 to the lawfulness of confinement or to particulars affecting its duration are the province of
22 habeas corpus." *Hill v. McDonough*, 547 U.S. 573, 579 (2006) (quoting *Muhammad v.*
23 *Close*, 540 U.S. 749, 750 (2004)). "An inmate's challenge to the circumstances of his
24 confinement, however, may be brought under § 1983." *Id.*

25 The original complaint was incomprehensible and the amended complaint remains
26 quite confusing. Plaintiff states that he does not wish to proceed pursuant to either
27 § 2254 or § 1983. He argues that all judges, prosecutors, attorneys and clerks are
28 operating in a fiduciary trustee capacity; therefore he can pursue a contract action. He

1 presents no case law to support this assertion.

2 Plaintiff was convicted on several counts of committing lewd and lascivious acts on
3 a child under the age of 14 and he was sentenced to 100 years to life in state prison.
4 Amended Complaint at 15; *People v. Scott*, H040175, 2014 WL 1597928 (Cal. Ct. App.
5 April 21, 2014); *People v. Scott*, No. H024429, 2004 WL 2351590, (Cal. Ct. App. Oct. 20,
6 2004). For relief in this case plaintiff seeks for his conviction to be voided because of due
7 process violations. If plaintiff seeks to challenge his conviction he must file a habeas
8 petition after exhausting his state court remedies.¹

9 To the extent he seeks to recover damages for an allegedly unconstitutional
10 conviction or imprisonment, or for other harm caused by actions whose unlawfulness
11 would render a conviction or sentence invalid, a 42 U.S.C. § 1983 plaintiff must prove
12 that the conviction or sentence has been reversed on direct appeal, expunged by
13 executive order, declared invalid by a state tribunal authorized to make such
14 determination, or called into question by a federal court's issuance of a writ of habeas
15 corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994).

16 To the extent plaintiff names the prosecuting deputy district attorney as a
17 defendant he is informed that a state prosecuting attorney enjoys absolute immunity from
18 liability under 42 U.S.C. § 1983 for his conduct in "pursuing a criminal prosecution"
19 insofar as he acts within his role as an "advocate for the State" and his actions are
20 "intimately associated with the judicial phase of the criminal process." *Imbler v.*
21 *Pachtman*, 424 U.S. 409, 430-31 (1976). But prosecutors are entitled only to qualified
22 immunity when they perform investigatory or administrative functions, or are essentially
23 functioning as police officers or detectives. *Buckley v. Fitzsimmons*, 509 U.S. 259, 273
24 (1993).

25

26

27 ¹ Court records indicate that plaintiff filed a habeas petition in this court that was denied.
28 See *Scott v. Galaza*, Case No. 06-cv-2792-MMC. To proceed with a second or
successive petition, plaintiff must obtain permission from the Ninth Circuit. See 28 U.S.C.
§ 2244(b)(3)(A).

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Plaintiff's allegations in this action are frivolous and fail to state a claim. Because no further amount of amendment would cure the deficiencies of the complaint, this action is dismissed without leave to amend.

CONCLUSION

1. The motions for an extension and to refile (Docket Nos. 12, 13) are **GRANTED** and the amended complaint is deemed timely filed and has been reviewed by the court.
2. This action is **DISMISSED** with prejudice as frivolous and for failure to state a claim.
3. The Clerk shall close this case.

IT IS SO ORDERED.

Dated: February 17, 2017



PHYLLIS J. HAMILTON
United States District Judge

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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 17, 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.

Dane Myron Scott ID: T51397
Correctional Training Facility WA-341
P.O. Box 705
Soledad, CA 93960

Dated: February 17, 2017

Susan Y. Soong
Clerk, United States District Court

Kelly Collins
By: _____
Kelly Collins, Deputy Clerk to the
Honorable PHYLLIS J. HAMILTON