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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN LEROY CLEMONS,
Plaintiff,
v.
DON ANDERSON, et al.,
Defendants.

Case No. 16-cv-07006-HSG (PR)

ORDER OF DISMISSAL

INTRODUCTION

On December 7, 2016, plaintiff, formerly an inmate at a correctional facility in California, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, seeking damages for alleged constitutional violations that resulted in his criminal conviction. His complaint is now before the court for review under 28 U.S.C. § 1915 because he has applied to proceed *in forma pauperis*.

DISCUSSION

A. Standard of Review

The Court must dismiss an *in forma pauperis* action at any time if the Court determines that the allegation of poverty is untrue, the action is frivolous or malicious, the action fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant 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. 1990).

The complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). “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

1 rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations and internal quotation marks
2 omitted). Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s
3 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
4 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual
5 allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic*
6 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer
7 “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. *Pro se* complaints
8 must be liberally construed. See *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

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

13 **B. Legal Claims**

14 In his complaint, plaintiff alleges various problems in connection with a criminal case
15 against him that led to his conviction and sentence in or about 2015. He alleges, for example, that
16 the Lake County Sheriff’s Department and Clearlake Police Department violated his constitutional
17 rights by obtaining an illegal warrant against him and conducting an illegal search and seizure. He
18 also alleges that the Lake County District Attorney’s Office conspired to have plaintiff wrongly
19 convicted and made false statements in order to have plaintiff’s bail increased.

20 Plaintiff’s claims are barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). The
21 United States Supreme Court has held that to recover damages in a suit under § 1983 for an
22 allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose
23 unlawfulness would render a conviction or sentence invalid, a plaintiff must prove that the
24 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
25 invalid by a state tribunal authorized to make such determination, or called into question by a
26 federal court’s issuance of a writ of habeas corpus. *Id.* A claim for damages arising from a
27 conviction or sentence that has not been so invalidated is not cognizable under § 1983. *Id.* Here,
28 plaintiff’s request for damages under § 1983 for defendants’ allegedly unlawful actions in securing

1 his state conviction is barred by *Heck* because a judgment in favor of plaintiff would necessarily
2 imply the invalidity of a state conviction that has not already been invalidated.

3 It is not clear that success on the excessive bail claim would call into question the
4 validity of the conviction, but even if that claim is not barred by the *Heck* doctrine, the prosecutors
5 have absolute immunity against a claim for damages because the excessive bail claim was based
6 on their conduct as advocates in the criminal case. See *Buckley v. Fitzsimmons*, 509 U.S. 259,
7 272-73 (1993); *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976). Similarly, to the extent
8 plaintiff brings claims against the state court judge who issued the warrant in his case, a state
9 judge is absolutely immune from civil liability for damages for acts performed in his judicial
10 capacity. See *Pierson v. Ray*, 386 U.S. 547, 553-55 (1967) (applying judicial immunity to actions
11 under 42 U.S.C. § 1983). “[J]udicial immunity is an immunity from suit for damages, not just
12 from ultimate assessment of damages.” See *Mireles v. Waco*, 502 U.S. 9, 11 (1991).

13 Plaintiff also seeks injunctive relief, requesting “the corruption of Lake County to cease,”
14 “the intimidation to stop,” and “removal from public positions of power.” Compl. at 4. Even if
15 plaintiff’s claims for injunctive relief somehow survive the *Heck* bar, they are too conclusory and
16 vague to put any defendant on notice of his or her alleged actions, and they fail to state a federal
17 constitutional claim. Injunctive relief may not be granted absent a great and immediate threat that
18 the plaintiff will suffer future irreparable injury for which there is no adequate remedy at law.
19 *Nava v. City of Dublin*, 121 F.3d 453, 458 (9th Cir. 1997), *overruled in part on other grounds*,
20 *Hodgers–Durgin v. de la Vina*, 199 F.3d 1037, 1041 (9th Cir.1999). Past injury to plaintiff is
21 usually insufficient to satisfy this requirement. *Id.* at 459. Plaintiff has alleged that he was
22 unfairly charged and prosecuted for an offense in 2015, but he has alleged no current indication
23 that defendants intend to prosecute him again now. As there is no allegation of a current, let alone
24 immediate, threat of harm to plaintiff, his claim for injunctive relief is denied without prejudice to
25 bringing such a claim again in the future when and if such a threat arises.

26 Finally, plaintiff states that “a writ of mandate will be required” because he has been
27 unable to obtain documents from his criminal case and has been unable to secure the return of his
28 seized property. Compl. at 7. Federal district courts are without power to issue mandamus to

1 direct state courts, state judicial officers, or other state officials in the performance of their duties.
2 A petition for mandamus to compel a state court or official to take or refrain from some action is
3 frivolous as a matter of law. *See Demos v. U.S. District Court*, 925 F.2d 1160, 1161-62 (9th Cir.
4 1991); *see also In re Campbell*, 264 F.3d 730, 731-32 (7th Cir. 2001) (denying petition for writ of
5 mandamus that would order state trial court to give plaintiff access to certain trial transcripts
6 which he sought in preparation for filing state post-conviction petition; federal court may not, as a
7 general rule, issue mandamus to a state judicial officer to control or interfere with state court
8 litigation). Plaintiff's mandamus remedy, if any, lies in state court.

9 **CONCLUSION**


10 For the foregoing reasons, the complaint is **DISMISSED** for failure to state a claim upon
11 which relief may be granted. The dismissal is without prejudice to plaintiff reasserting his claim
12 for damages in a new § 1983 complaint if his conviction is invalidated.

13 Plaintiff's non-prisoner application to proceed in forma pauperis (dkt. no. 12), is
14 **GRANTED**.

15 The Clerk shall terminate all pending motions, enter judgment, and close the file.

16 **IT IS SO ORDERED.**

17 Dated: 4/5/2017

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20 HAYWOOD S. GILLIAM, JR.
21 United States District Judge
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