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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

DAVID TORRES,

Plaintiff,

v.

JUDICIAL COUNCIL OF CALIFORNIA; FIVE UNKNOWN AGENTS OF THE JUDICIAL COUNCIL OF CALIFORNIA; MARTIN HOSHINO, in his official capacity; STATE OF CALIFORNIA-DEPARTMENT OF REHABILITATION; SCOTT KERNAN, in his official capacity; KATHLEEN ALLISON, in her official capacity; STATE OF CALIFORNIA-DEPARTMENT OF CORRECTIONS AND REHABILITATION; SUPERIOR COURT OF SAN DIEGO; and FIVE UNKNOWN AGENTS OF THE SUPERIOR COURT,

Defendants.

CASE NO. 17cv0028 JM(JLB)

ORDER GRANTING MOTIONS TO DISMISS; REMANDING ACTION

Defendants Judicial Council of California and the Superior Court of California, County of San Diego, erroneously sued as Superior Court of San Diego, (collectively the “Judicial Defendants”) move to dismiss and to strike portions of Plaintiff’s First Amended Complaint (“FAC”) for failure to state a claim; defendants California Department of Corrections and Rehabilitation, and two of its officials sued in their official capacities, Scott Kernan and Kathleen Allison, (collectively “CDCR

1 Defendants”), move to dismiss the FAC on grounds that they are not persons under  
2 42 U.S.C. §1983; and defendant County of San Diego (“County”) moves to dismiss the  
3 FAC for failure to state a claim. The court grants the motions to dismiss the federal  
4 claims and remands the action to the Superior Court of California, County of San  
5 Diego.

### 6 BACKGROUND

7 On January 6, 2017, Defendants removed this action from the Superior Court of  
8 California, County of San Diego. The FAC, filed on January 27, 2017, alleges ten  
9 claims for relief: (1) false imprisonment; (2) violation of 42 U.S.C. §1983, Fourteenth  
10 Amendment; (3) violation of 42 U.S.C. §1983, Fourth and Fourteenth Amendments;  
11 (4) violation of 42 U.S.C. §1983, Eighth Amendment; (5) negligent infliction of  
12 emotional distress; (6) negligence; (7) breach of mandatory public entity duties; (8)  
13 legal malpractice; (9) declaratory judgment; and (10) violation of 42 U.S.C. §1983,  
14 Sixth Amendment. Plaintiff’s claims arise from the following generally described  
15 allegations.

16 While on probation for a commercial burglary conviction in San Diego Superior  
17 Court Case No. SCD 290954, on or about June 27, 2012, Plaintiff was re-incarcerated  
18 to a term of six years for new offenses of petty theft, receiving stolen property, and  
19 probation violation in Case No. SCD 241737. (FAC ¶¶53-55). In both these cases,  
20 Plaintiff was represented by the County of San Diego’s Public Defenders Office  
21 (“SDPDO”).

22 On November 17, 2014, and October 7, 2015, an unknown entity acting on  
23 Plaintiff’s behalf, “but without his knowledge or consent,” filed Petitions for  
24 Redesignation of Sentence (“Petitions”) pursuant to Penal Code §1170.18, the  
25 codification of Proposition 47 passed by voters on November 4, 2014.<sup>1</sup> At no time had  
26 Plaintiff been informed or consulted about the filing of these two Petitions. (FAC ¶58).

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28 <sup>1</sup> The court notes that Proposition 47 is not a self-executing statute. That is, to  
take advantage of a reduction in sentence, an incarcerated defendant must affirmatively  
petition the sentencing court for relief. Penal Code § 1170.18(a)

1 On March 3, 2015, Judge David. J. Danielsen of the San Diego Superior Court granted  
2 both Petitions and ordered that Plaintiff be released “forthwith.” (FAC ¶¶59-60). The  
3 Minute Orders in both cases reflect that SDPDO appeared on behalf of Plaintiff. Id.  
4 The Minute Orders, however, do not reflect the identify of the attorney who appeared  
5 on Plaintiff’s behalf. Plaintiff did not receive notice from the court, SDPDO, or any  
6 other party concerning the Minute Orders ordering his immediate release from custody.

7 On October 1, 2015, Plaintiff, acting on his own behalf, filed a Petition for  
8 Redesignation of Sentence pursuant to Penal Code §1170.18. On October 13, 2015,  
9 Plaintiff received notice from Clerk of Court for the Superior Court informing him that  
10 his Petitions had been granted on March 3, 2015. Plaintiff was released from custody  
11 on October 23, 2015.

12 Plaintiff seeks compensation for the 230 additional days he spent in custody.  
13 (FAC ¶69). Plaintiff also seeks a declaration that his detention was unlawful and an  
14 award of attorney’s fees and costs.

## 15 DISCUSSION

### 16 Legal Standards

17 Federal Rule of Civil Procedure 12(b)(6) dismissal is proper only in  
18 "extraordinary" cases. United States v. Redwood City, 640 F.2d 963, 966 (9th Cir.  
19 1981). Courts should grant 12(b)(6) relief only where a plaintiff's complaint lacks a  
20 "cognizable legal theory" or sufficient facts to support a cognizable legal theory.  
21 Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). Courts should  
22 dismiss a complaint for failure to state a claim when the factual allegations are  
23 insufficient “to raise a right to relief above the speculative level.” Bell Atlantic Corp.  
24 v. Twombly, 550 U.S. 544, 555 (2007) (the complaint’s allegations must “plausibly  
25 suggest[.]” that the pleader is entitled to relief); Ashcroft v. Iqbal, 556 U.S. 662 (2009)  
26 (under Rule 8(a), well-pleaded facts must do more than permit the court to infer the  
27 mere possibility of misconduct). “The plausibility standard is not akin to a ‘probability  
28 requirement,’ but it asks for more than a sheer possibility that a defendant has acted

1 unlawfully.” Id. at 678. Thus, “threadbare recitals of the elements of a cause of action,  
2 supported by mere conclusory statements, do not suffice.” Id. The defect must appear  
3 on the face of the complaint itself. Thus, courts may not consider extraneous material  
4 in testing its legal adequacy. Levine v. Diamantheset, Inc., 950 F.2d 1478, 1482 (9th  
5 Cir. 1991). The courts may, however, consider material properly submitted as part of  
6 the complaint. Hal Roach Studios, Inc. v. Richard Feiner and Co., 896 F.2d 1542, 1555  
7 n.19 (9th Cir. 1989).

8 Finally, courts must construe the complaint in the light most favorable to the  
9 plaintiff. Concha v. London, 62 F.3d 1493, 1500 (9th Cir. 1995), cert. dismissed,  
10 116 S. Ct. 1710 (1996). Accordingly, courts must accept as true all material allegations  
11 in the complaint, as well as reasonable inferences to be drawn from them. Holden v.  
12 Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992). However, conclusory allegations of  
13 law and unwarranted inferences are insufficient to defeat a Rule 12(b)(6) motion. In  
14 Re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

15 Prior to Iqbal and Twombly, “a claim of municipal liability under § 1983 is  
16 sufficient to withstand a motion to dismiss even if the claim is based on nothing more  
17 than a bare allegation that the individual officers' conduct conformed to official policy,  
18 custom, or practice.” Whitaker v. Garcetti, 486 F.3d 572, 581 (9th Cir.2007). In  
19 addressing the impact of Iqbal and Twombly on the pleading standards for civil rights  
20 cases, the Ninth Circuit more recently stated:

21 we can at least state the following two principles common to all of them.  
22 First, to be entitled to the presumption of truth, allegations in a complaint  
23 or counterclaim may not simply recite the elements of a cause of action,  
24 but must contain sufficient allegations of underlying facts to give fair  
25 notice and to enable the opposing party to defend itself effectively.  
Second, the factual allegations that are taken as true must plausibly  
suggest an entitlement to relief, such that it is not unfair to require the  
opposing party to be subjected to the expense of discovery and continued  
litigation.

26 AE ex rel. Hernandez v. County of Tulare, 666 F.3d 631,637 (9<sup>th</sup> Cir. 2012) (quoting  
27 Starr v. Baca, 652 F.3d 1202 (9th Cir.2011)).

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1 **The Federal Claims**

2 Concerned that the FAC fails to state a federal claim in this removal action, the  
3 court first addresses the federal claims and then analyzes whether the action was  
4 improvidently removed from the Superior Court. Courts strictly construe the removal  
5 statute, 28 U.S.C. § 1441, against removal jurisdiction. Gaus v. Miles, Inc., 980 F.2d  
6 564, 566 (9th Cir.1992). Indeed, there is a “strong presumption” against removal, and  
7 “[f]ederal jurisdiction must be rejected if there is any doubt as to the right of removal  
8 in the first instance.” Id. This strong presumption “against removal jurisdiction means  
9 that the defendant always has the burden of establishing that removal is proper.” Id.  
10 “[A] federal court may dismiss sua sponte if jurisdiction is lacking.” Fiedler v. Clark,  
11 714 F.2d 77, 78 (9th Cir.1983).

12 The Judicial Defendants’ Motion

13 **The Second, Third, and Fifth Causes of Action**

14 Judicial Defendants move to dismiss the Second, Third, and Fifth Causes of  
15 Action because neither the Judicial Council nor the Superior Court are persons within  
16 the meaning of 42 U.S.C. §1983. Under 42 U.S.C. § 1983, “[e]very person” who acts  
17 under color of state law may be sued. The term “person” has been interpreted broadly,  
18 even to include cities, counties, and other local government entities, but not states or  
19 their agencies. See Monell v. New York City Dep’t of Social Services, 436 U.S. 658  
20 (1978). It has long been the law that a damages action against a State, or its officials  
21 acting in their official capacities, is an action against the State. See Will v. Michigan  
22 Dep’t of State Police, 491 U.S. 58, 71 (1989). As the Judicial Council of California  
23 and the Superior Court are indisputably state agencies, Plaintiff cannot assert a  
24 damages claim against these Defendants. See Wolfe v. Strankham, 392 F.3d 358, 364  
25 (9th Cir. 2004) (the Judicial Council of California is a state agency); Greater Los  
26 Angeles Council on Dearnness, Inc. v. Zolin, 812 F.2d 1103, 1110 (9th Cir.1987) (the  
27 California Superior Court is a state agency).

28 Plaintiff contends that the Judicial Defendants waived Eleventh Amendment

1 immunity and are, therefore, subject to §1983 liability. The court rejects this argument  
2 because, among other things, the Judicial Defendants are not asserting the Eleventh  
3 Amendment to bar Plaintiff’s claims. Rather, the threshold issue under §1983 is  
4 whether a state agency is a “person” for purposes of §1983. Plaintiff fails to establish  
5 the prerequisites for stating a §1983 claim.

6 In sum, the court dismisses the §1983 claims with prejudice and without leave  
7 to amend.

### 8 **The Ninth Cause of Action**

9 Judicial Defendants move to dismiss this claim for declaratory relief brought  
10 pursuant to 28 U.S.C. §§2201 and 2202 because (1) declaratory relief is not an  
11 independent cause of action, but instead, a remedy, and (2) declaratory relief operates  
12 prospectively and Plaintiff seeks relief to address past wrongs. Plaintiff does not  
13 oppose dismissal of this claim. Accordingly, the court dismisses the declaratory relief  
14 claims against all Defendants with prejudice.

15 In sum, the court dismisses all federal claims asserted against the Judicial  
16 Defendants.

### 17 The County of San Diego’s Motion

18 It is well-established that municipalities, their agencies and their supervisory  
19 personnel cannot be held liable under §1983 on any theory of respondeat superior or  
20 vicarious liability. They can, however, be held liable for deprivations of constitutional  
21 rights resulting from their formal policies, practices or customs. See Monell, 436 U.S.  
22 at 691-693; Watts v. County of Sacramento, 256 F.3d 886, 891 (9th Cir. 2001); Shaw  
23 v. California Dep’t of Alcoholic Beverage Control, 788 F.2d 600, 610 (9th Cir. 1986).

24 Locating a “policy” ensures that a municipality “is held liable only for those  
25 deprivations resulting from the decisions of its duly constituted legislative body or of  
26 those officials whose acts may be fairly said to be those of the municipality.” Board  
27 of the County Comm’rs of Bryan County, Oklahoma v. Brown, 520 U.S. 397, 403-04  
28 (1997) (citing Monell, 436 U.S. at 694). Similarly, an act performed pursuant to a

1 “custom” which has not been “formally approved by an appropriate decisionmaker may  
2 fairly subject a municipality to liability on the theory that the relevant practice is so  
3 widespread as to have the force of law.” Id. (citing Monell, 436 U.S. at 690-691); see  
4 also Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989) (holding that municipal  
5 liability under § 1983 may be shown if Plaintiff proves that the employee committed  
6 an alleged constitutional violation pursuant to a “longstanding practice or custom  
7 which constitutes the ‘standard operating procedure’ of the local government entity.”).

8 “To bring a § 1983 claim against a local government entity, a plaintiff must plead  
9 that a ‘municipality’s policy or custom caused a violation of the plaintiff’s  
10 constitutional rights.” Ass’n for Los Angeles Deputy Sheriffs v. Cnty. of Los Angeles,  
11 648 F.3d 986, 992-93 (9th Cir. 2011). A plaintiff must show (1) he possessed a  
12 constitutional right of which he was deprived, (2) the municipality had a policy, (3) the  
13 policy amounts to deliberate indifference to the plaintiff’s constitutional right, and  
14 (4) the policy is the “moving force behind the constitutional violation.” Anderson v.  
15 Warner, 451 F.3d 1063, 1070 (9th Cir. 2006). “For a policy to be the moving force  
16 behind the deprivation of a constitutional right, the identified deficiency in the policy  
17 must be closely related to the ultimate injury,” and the plaintiff must establish “that the  
18 injury would have been avoided had proper policies been implemented.” Long v. Cnty.  
19 of Los Angeles, 442 F.3d 1178, 1190 (9th Cir. 2006).

20 Here, the FAC is devoid of any allegations that County maintained a policy,  
21 custom, or practice of failing to transmit official Superior Court documents to the  
22 appropriate entities to obtain reductions in sentence pursuant to Proposition 47.  
23 Moreover, Plaintiff fails to allege any role by County in disseminating Minute Orders  
24 issued by the Superior Court, an entity distinct from County.

25 Finally, to the extent Plaintiff seeks to impose §1983 liability on SDPDO, such  
26 a claim necessarily fails. Public defenders do not act under color of state law, see Polk  
27 County v. Dodson, 454 U.S. 312, 325 (1981); Cox v. Hellerstein, 685 F.2d 1098, 1099  
28 (9th Cir. 1982) (applying the holding of Polk in a Bivens action), and there is no

1 respondeat superior liability under §1983.

2 In sum, the court grants the motion to dismiss all federal claims asserted against  
3 the County of San Diego without leave to amend.

4 CDCR's Motion

5 CDCR, as well as Scott Kernan and Kathleen Allison, sued in their official  
6 capacities for money damages, move to dismiss the federal claims because they are not  
7 persons under §1983. The court grants the motion to dismiss because the CDCR is an  
8 arm of the state and, therefore, not subject to §1983 liability. Bennett v. People of State  
9 of California, 406 F.2d 36 (9th Cir. 1969) (CDCR is not a person for purposes of  
10 §1983); Haack v. California Dep't of Corrections and Rehabilitation, 2012 WL  
11 570353, at \*4 (E.D. Cal. Feb. 12, 2012); Will v. Michigan Dep't of State Police,  
12 491 U.S. 58, 71 (1989).

13 Plaintiff contends that the CDCR Defendants waived Eleventh Amendment  
14 immunity and are, therefore, subject to §1983 liability. The court rejects this argument  
15 because, among other things, the CDCR Defendants are not asserting the Eleventh  
16 Amendment to bar Plaintiff's claims. Rather, the threshold issue under §1983 is  
17 whether a state agency like CDCR, or its officials acting in their official capacities, are  
18 "persons" for purposes of §1983, something Plaintiff fails to establish.

19 In sum, the court grants the motion to dismiss the federal claims without leave  
20 to amend.

21 **Remand**

22 The court sua sponte remands this action to state court. See Maniar v. FDIC,  
23 979 F.2d 782, 785 (9<sup>th</sup> Cir. 1992) (the court may sua sponte remand an action to state  
24 court). Federal courts are courts of limited jurisdiction. "Without jurisdiction the court  
25 cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when  
26 it ceases to exist, the only function remaining to the court is that of announcing the fact  
27 and dismissing the cause." Steel Co. v. Citizens for a Better Environment, 523 U.S. 83,  
28 94 (1998) (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264



1 (1868)). Accordingly, federal courts are under a continuing duty to confirm their  
2 jurisdictional power and are even “obliged to inquire sua sponte whenever a doubt  
3 arises as to [its] existence. . . .” Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle,  
4 429 U.S. 274, 278 (1977) (citations omitted).

5 “Any civil action of which the district courts have original jurisdiction founded  
6 on a claim or right arising under the Constitution, treaties or laws of the United States  
7 shall be removable without regard to the citizenship or residence of the parties.”  
8 28 U.S.C. §1441(b). Whether a claim “arises under” federal law for removal purposes  
9 is determined by the well-pleaded complaint rule. Under the “well-pleaded complaint  
10 rule, . . . federal jurisdiction exists only when a federal question is presented on the  
11 face of the plaintiff’s properly pleaded complaint.” Caterpillar, Inc. v. Williams,  
12 482 U.S. 386, 392 (1987) (internal quotation marks omitted). “[T]he mere presence of  
13 a federal issue in a state cause of action does not automatically confer federal-question  
14 jurisdiction.” Merrell Dow Pharm., Inc. v. Thompson, 478 U.S. 804, 813 (1986). A  
15 “federal issue” is not “a password opening federal courts to any state action embracing  
16 a point of federal law.” Grable & Sons Metal Prods. v. Darue Eng’g & Mfg., 545 U.S.  
17 308, 314 (2005) (internal quotation marks omitted). See Rivet v. Regions Bank of  
18 Louisiana, 522 U.S. 470, 475 (1998). The party who invokes federal removal  
19 jurisdiction, has the burden of demonstrating the existence of federal jurisdiction. See  
20 Gaus, 980 F.2d 566; B., Inc. v. Miller Brewing Co., 663 F.2d 545 (5th Cir. 1981). Any  
21 doubts regarding removal jurisdiction are construed against removal and in favor of  
22 remanding the case to state court. See Gaus, 980 F.2d at 566.<sup>2</sup>

23 Here, under the well-pleaded complaint rule, Plaintiff’s claims, as set forth in the  
24 original complaint, the operative complaint at the time of removal, do not raise federal  
25 questions against the named defendants nor do they require the resolution of substantial  
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28 <sup>2</sup> In any case where “the district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. §1447(c).

1 federal issues.<sup>3</sup> As set forth above, applying long-standing unassailable threshold  
2 principles regarding proper parties cognizable as defendants in a §1983 case, no federal  
3 questions are asserted against any Defendant. Accordingly, as federal jurisdiction must  
4 “be rejected if there is any doubt as to the right of removal in the first instance,” Gaus,  
5 980 F.2d at 566, the court remands the action to state court. Pursuant to 28 U.S.C.  
6 §1367, the court declines to exercise supplemental jurisdiction over the state law claims  
7 and remands the action to the Superior Court of California, County of San Diego.

8 In sum, the court grants all motions to dismiss the federal claims without leave  
9 to amend and remands this action to the Superior Court of California, County of San  
10 Diego. The Clerk of Court is instructed to close the file.

11 **IT IS SO ORDERED.**

12 DATED: April 6, 2017

13   
14 Hon. Jeffrey T. Miller  
United States District Judge

15 cc: All parties  
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28 <sup>3</sup> The original complaint is based upon substantially the same allegations as the  
FAC and sets forth four §1983 claims.