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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 GAVIN B. DAVIS,

12 Plaintiff,

13 v.

14 SAN DIEGO DISTRICT ATTORNEY;
15 MR. LEONARD TRINH; SAN DIEGO
16 POLICE DEPARTMENT; JOHN DOES,

17 Defendants.
18
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Case No.: 17-CV-654 JLS (BGS)

**ORDER: (1) GRANTING MOTION
TO DISMISS; (2) DISMISSING
COMPLAINT; (3) DENYING
MOTION FOR SUMMARY
JUDGMENT; (4) DENYING
MOTION FOR DECLARATORY
JUDGMENT; AND (5) DENYING EX
PARTE MOTION FOR JOINDER**

(ECF Nos. 76, 77, 81, 94)

20 Presently before the Court are Defendants Leonard Trinh and San Diego District
21 Attorney's Motion to Dismiss Third Amended Complaint, ("MTD," ECF No. 76). Also
22 before the Court are Plaintiff Gavin B. Davis's Response in Opposition, ("Opp'n," ECF
23 No. 84), and Defendants' Reply in Support of, ("Reply," ECF No. 85), the Motion to
24 Dismiss.¹ Additionally, Plaintiff filed a Motion for Summary Judgment, (ECF No. 77), to
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26 ¹ Plaintiff filed a sur-reply in response to Defendants' Reply, (ECF No. 87). The Local Rules do not allow
27 for sur-replies. "District courts have the discretion to either permit or preclude the filing of a sur-reply."
28 *Estate of Alvarado v. Tackett*, No. 13-CV-1202 W (JMA), 2018 WL 1141502, at *1 (S.D. Cal. Mar. 2,
2018) (citing *Johnson v. Wennes*, No. 08-CV-1798-L (JMA), 2009 WL 1161620, at *2 (S.D. Cal. Apr.
28, 2009)). Courts generally exercise discretion when a valid reason exists, such as where the movant

1 which Defendants filed a Response in Opposition, (ECF No. 79), and Plaintiff filed a
2 Reply, (ECF No. 83). The Court vacated the hearing on both motions and took them under
3 submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). (ECF No. 88.)
4 Finally, Plaintiff filed a motion requesting the Court judicially notice certain facts and
5 further requesting declaratory relief, (ECF No. 81), as well as an *ex parte* “Motion for
6 FRCP 19 Compulsory Joinder,” (ECF No. 94). Having considered the parties’ arguments
7 and the law, the Court rules as follows.

8 **BACKGROUND**

9 This case arises out of allegations that Defendant District Attorney Trinh “is
10 Vindictively and Maliciously Prosecuting the Plaintiff” in a state criminal case currently
11 pending before the Superior Court of San Diego: *State of California v. Gavin B. Davis*, No.
12 SCD266332. (Third Am. Compl. (“TAC”), ECF No. 72, ¶ 10.) Plaintiff further alleges
13 that Defendant Trinh has attempted to remand Plaintiff to the San Diego County Sheriff’s
14 Department on an unreasonable and excessive bail. (*Id.*)

15 In March 2016, the San Diego police department arrested Plaintiff for reasons not
16 disclosed by Plaintiff. (*Id.* ¶ 13.) He does state, however, that he posted bail and Defendant
17 San Diego District Attorney’s Office brought a case against him—*State v. Davis*, No.
18 SCD266332. (*Id.*) Then, in June 2016, Plaintiff was arrested again by the San Diego police
19 for perjury and fraud; Plaintiff was released on \$50,000 bail. (*Id.* ¶ 14.) Plaintiff alleges
20 that a case was opened against him with respect to these charges as case number
21 SCD267655, which was later consolidated with case number SCD266332. (*Id.*) Plaintiff
22 states that the charges for the June 2016 arrest were subsequently dropped in August 2017.
23 (*Id.*)

24 On October 5, 2016, Defendant Trinh moved the state trial court to remand Plaintiff
25 to custody without bail, which the court granted. (*Id.* ¶ 15.) On October 18, 2016, the San
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27 raises new arguments in the Reply brief. *Id.* (citation omitted). Here, Defendants do not advance any new
28 arguments in their Reply brief and the Court declines to exercise its discretion to consider Plaintiff’s sur-
reply. Accordingly, the Court **STRIKES** the document from the record, (ECF No. 87).

1 Diego Sheriff's Department transferred Plaintiff from George Baily Donovan Facility to
2 San Diego Central Jail. (*Id.* ¶ 19.) On October 19, 2016, Plaintiff alleges that he was given
3 a "1368 Examination,"² which Plaintiff says he passed "with flying colors." (*Id.* ¶¶ 20–
4 21.) On November 2, 2016, Defendant Trinh requested bail in the amount of \$200,000,
5 but Plaintiff states that the state trial court set bail at \$10,000. (*Id.* ¶ 22.) In November
6 2016, Plaintiff retained counsel for his two criminal cases, (*id.* ¶ 24), but his counsel
7 withdrew on January 27, 2017, citing a conflict of interest, (*id.* ¶ 25). Plaintiff alleges that
8 at the same January 27th hearing, Mr. Trinh requested Plaintiff be remanded to custody
9 without bail, which the trial court denied. (*Id.* ¶ 26.)

10 Plaintiff did not attend his next court appearance on April 17, 2017, which resulted
11 in the trial court issuing two bench warrants and increasing Plaintiff's bail, at Defendant
12 Trinh's request, from \$10,000 to \$50,000 in No. SCD266332 and from \$50,000 to
13 \$100,000 in No. SCD26765. (*Id.* ¶ 28.) Plaintiff traveled to Vermont in April 2017 and
14 the U.S. Marshal Service arrested him there in May 2017. (*Id.* ¶ 30.) Plaintiff states that
15 he posted bail in Vermont, (*id.*), as well as posting the \$50,000 bond in No. SCD266332
16 and retaining new counsel, (*id.* ¶ 31). Plaintiff appeared before the trial court in California
17 on July 7, 2017, where the court ordered Plaintiff to post a \$100,000 bond or be remanded
18 to custody the same day. (*Id.* ¶ 32.) Plaintiff states he was able to post the \$100,000 bond.
19 (*Id.*)

20 In August 2017, the San Diego District Attorney's Office notified Plaintiff's new
21 counsel that Plaintiff was to be arraigned on a new criminal charge for failing to appear at
22 the April 2017 hearing. (*Id.* ¶ 34.) Plaintiff appeared for the new criminal charge and was
23 released on his own recognizance. (*Id.*) Plaintiff's next hearing was October 10, 2017,
24 and Plaintiff alleges that he appeared for the morning court session, but was unable to
25 attend the afternoon session having been admitted to the University of California, San
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28 ² The Court assumes a 1368 examination refers to California Penal Code § 1368, which generally allows
the court to suspend criminal proceedings if the court doubts the mental competence of the defendant.

1 Diego's Emergency Department. (*Id.* ¶ 37.) As a result, Defendant Trinh requested bail
2 be increased to \$1,000,000. (*Id.*) Plaintiff offered to surrender to the District Attorney's
3 office several times throughout October 2017. (*Id.* ¶ 39.) Instead, Plaintiff alleges he was
4 arrested on November 1, 2017, (*id.*), and remained in custody until April 23, 2018, (*id.*
5 ¶ 40). While in custody, Plaintiff alleges he was not allowed access to the law library and
6 was denied access to his attorney. (*Id.*) Plaintiff entered a plea agreement and was released
7 on his own recognizance on April 23, 2018. (*Id.* ¶¶ 41–42.) Plaintiff filed his Third
8 Amended Complaint on May 15, 2018.

9 Plaintiff brings six claims. First, Plaintiff brings a claim under 42 U.S.C. § 1983
10 against both Defendant Trinh and his employer the San Diego District Attorney's office
11 for violation of Plaintiff's Fourth Amendment rights. (*Id.* ¶ 11.) Second, Plaintiff brings
12 § 1983 claim against Defendant Trinh for violating his Eighth Amendment rights due to
13 excessive bail as well as an alleged beating Plaintiff suffered while in detention on October
14 20, 2016. (*Id.*) Third, Plaintiff brings the same claims against Defendant San Diego
15 District Attorney's office. Fourth, Plaintiff alleges a § 1983 claim for deprivation of his
16 Fifth and Fourteenth Amendment rights based on Defendant Trinh's denial of his access to
17 the courts. (*Id.*) Plaintiff's fifth cause of action is for the same allegations against
18 Defendant San Diego District Attorney's office. (*Id.*) Plaintiff's sixth cause of action is
19 against both Defendants for § 1983 malicious prosecution.

20 This lawsuit has been lingering in this Court for more than a year. Plaintiff filed his
21 original forty-four-page Complaint in March 2017. (ECF No. 1.) In response, Defendants
22 San Diego District Attorney and Leonard Trinh filed a motion to dismiss, (ECF No. 5), as
23 did Defendant City of San Diego (erroneously sued as San Diego Police Department),
24 (ECF No. 6). Plaintiff filed a motion for preliminary injunction. (ECF No. 9.) The Court
25 denied the preliminary injunction, (ECF No. 19), which Plaintiff appealed to the Ninth
26 Circuit, (ECF No. 22). In the interim, this Court granted Defendants' motions to dismiss
27 and dismissed Plaintiff's complaint without prejudice. Plaintiff filed a First Amended
28 Complaint, (ECF No. 32), and then filed a Second Amended Complaint, (ECF No. 37), but

1 labeled the latter as his “First Amended Complaint.” The Ninth Circuit affirmed this
2 Court’s Order denying preliminary injunctive relief. (ECF No. 64.) The Court granted
3 Defendants’ motion and dismissed Plaintiff’s Second Amended Complaint. Plaintiff filed
4 his Third Amended Complaint, which only named Defendants Trinh and San Diego
5 District Attorney’s Office. Defendants responded with the current Motion to Dismiss
6 based under Rules 12(b)(1) and 12(b)(6).

7 **LEGAL STANDARD**

8 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the
9 defense that the complaint “fail[s] to state a claim upon which relief can be granted,”
10 generally referred to as a motion to dismiss. The Court evaluates whether a complaint
11 states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil
12 Procedure 8(a), which requires a “short and plain statement of the claim showing that the
13 pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual
14 allegations,’ . . . it [does] demand more than an unadorned, the-defendant-unlawfully-
15 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
16 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s obligation to
17 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
18 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
19 *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A
20 complaint will not suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further factual
21 enhancement.’” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at 557).

22 In order to survive a motion to dismiss, “a complaint must contain sufficient factual
23 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
24 *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible
25 when the facts pled “allow the court to draw the reasonable inference that the defendant is
26 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at
27 556). That is not to say that the claim must be probable, but there must be “more than a
28 sheer possibility that a defendant has acted unlawfully.” *Id.* Facts “‘merely consistent

1 defendant who feels aggrieved by a prosecutor’s conduct in a criminal prosecution must
2 seek recourse in the criminal proceedings, not a collateral civil lawsuit.

3 Plaintiff responds that cases concerning a Fourth Amendment false imprisonment
4 claim, brought under 42 U.S.C. § 1983, are immediately actionable. (Opp’n 6 (citing
5 *Wallace v. Kato*, 549 U.S. 384, 389–93 (2007)).)

6 State prosecutors, like Defendant Trinh, are entitled to absolute prosecutorial
7 immunity for acts taken in their official capacity. *See Van de Kamp v. Goldstein*, 555 U.S.
8 335, 341 (2009); *Imbler*, 424 U.S. at 430–31 (holding prosecutors absolutely immune from
9 civil suits for damages under § 1983 for initiating criminal prosecutions and presenting
10 cases). “[A]bsolute immunity may not apply when a prosecutor is not acting as ‘an officer
11 of the court,’ but is instead engaged in other tasks, say investigative or administrative
12 tasks.” *Van de Kamp*, 555 U.S. at 342 (quoting *Imbler*, 424 U.S. at 431 n.33). The burden
13 of showing absolute immunity falls on the official seeking to assert it and the Supreme
14 Court has emphasized that courts are “quite sparing” in recognition of absolute immunity.
15 *Burns v. Reed*, 500 U.S. 478, 486–87 (1991) (quoting *Forrester v. White*, 484 U.S. 219,
16 224 (1988)).

17 Courts take a functional approach to determining whether immunity applies; thus,
18 the Supreme Court has applied absolute immunity where a prosecutor initiates a judicial
19 proceeding or appears in court to present evidence for a search warrant. *Van de Kamp*, 555
20 U.S. at 343 (citations omitted). Conversely, absolute immunity does not apply when a
21 prosecutor gives advice to police during a criminal investigation, when a prosecutor makes
22 statements to the press, or when a prosecutor acts as a complaining witness in support of a
23 warrant. *Id.* (citations omitted).

24 The decisions taken by Defendant Trinh in Plaintiff’s state criminal cases all fall
25 within the traditional scope of absolute immunity. Actions such as requesting a criminal
26 defendant be remanded to custody, adding or dropping criminal charges, and requesting
27 significant bail amounts are all prosecutorial decisions and not investigative or
28 administrative. *See Ismail v. Cnty. of Orange*, 917 F. Supp. 2d 1060, 1068 (C.D. Cal.

1 2012), *aff'd* 676 Fed. App'x 690, 691 (9th Cir. 2017). These actions encompass every
2 claim Plaintiff alleges against Defendant Trinh. (See TAC ¶ 11 (alleging the following
3 against Defendants: attempting to remand Plaintiff to custody, requesting excessive bail
4 amounts, placing Plaintiff in custody, and engaging in malicious prosecution).)

5 Plaintiff's argument to the contrary is unavailing. *Wallace v. Kato*, 549 U.S. at 387,
6 dealt with whether a petitioner's § 1983 suit was time barred, not with absolute immunity.
7 Absolute immunity is, by definition, absolute and is not limited by the type of § 1983 suit.
8 See *Imbler*, 424 U.S. at 429 (discussing remedies for prosecutorial misconduct other than
9 § 1983). Accordingly, the Court **GRANTS** the Motion to Dismiss and **DISMISSES**
10 **WITH PREJUDICE** all claims against Defendant Trinh.

11 **II. Supervisory Absolute Immunity**

12 In *Van de Kamp v. Goldstein*, 555 U.S. at 340, the question before the Supreme
13 Court was whether absolute immunity applied to allegations against the supervisors of trial
14 prosecutors for failure to “adequately [] train and [] supervise” their subordinate
15 prosecutors. The plaintiff in the case did not argue the supervisory prosecutors themselves
16 erred in the criminal trial; instead, he argued the supervisors were liable because their
17 “general methods of supervision” caused a “consequent error by an individual prosecutor”
18 at trial. *Id.* at 346. The Supreme Court held that absolute immunity barred the plaintiff's
19 claims against the supervisory prosecutors. *Id.* at 344–46.

20 In *Torres v. Goddard*, 793 F.3d 1046, 1049 (9th Cir. 2015), the Ninth Circuit dealt
21 with a case where the Arizona Attorney General's office issued seizure warrants for money
22 wire transfers that enabled human trafficking over the U.S.-Mexico border. Specifically,
23 the court addressed an allegation that the Attorney General ratified seizure warrants and
24 whether the Attorney General had absolute immunity for his subordinate's actions. The
25 plaintiffs in *Torres* argued that their claims arose from the Attorney General's acquiescence
26 and ratification of his subordinate's procurement of particular seizure warrants. *Id.* at 1058.
27 The court applied *Van de Kamp*'s absolute immunity rule to the Attorney General because
28 there was

1 no functional difference between a civil forfeiture prosecutor's
2 preparation and application for seizure warrants, and his
3 supervisor's decision to allow him to engage in those activities.
4 A supervisor's decision to permit a subordinate prosecutor to
5 prepare and apply for seizure warrants is an "act[] undertaken by
6 [the supervisor] in preparing for the initiation of judicial
7 proceedings," and "occur[s] in the course of [the supervisor's]
8 role as an advocate for the [s]tate."

7 *Id.* (alterations in original) (quoting *Kalina v. Fletcher*, 522 U.S. 118, 126 (1997)).

8 Here, Plaintiff's TAC does not clearly distinguish between the actions taken by
9 Defendant Trinh and those taken by San Diego District Attorney's Office. He alleges, for
10 example, that he is bringing a § 1983 claim "related to Defendant Leonard [Trinh]'s clear
11 pattern of attempting to remand the Plaintiff (defendant therein) to custody, pre-trial, in his
12 prosecution (SCD2666332) of the Plaintiff, on behalf of Defendant SDDA." (TAC ¶ 11.)
13 Plaintiff also alleges that after his March 2016 arrest, "Defendant SDDA brought case no:
14 SCD266332, [*State of California*] v. *Gavin B. Davis*, against the Plaintiff." (*Id.* ¶ 13
15 (alteration in original).) Later in the complaint, Plaintiff alleges that after his May 2017
16 arrest in Vermont, "Defendant Leonard [Trinh] and Defendant SDDA aggressively sought
17 extradition." (*Id.* ¶ 30.) In August 2017, Plaintiff alleges that the San Diego District
18 Attorney's Office notified Plaintiff's counsel that he would be arraigned on a new criminal
19 charge. (*Id.* ¶ 34.) When Plaintiff appeared for arraignment, "Defendant [San Diego
20 District Attorney], with a reasonable attorney of its employ at the arraignment, agreed to
21 grant the Plaintiff (defendant therein), release on his Own Recognizance." (*Id.*)

22 At their core, Plaintiff's allegations against the San Diego District Attorney's Office
23 are essentially a placeholder for actions by prosecutors other than Defendant Trinh.
24 Whether those attorneys are fellow trial attorneys who appeared in lieu of Defendant Trinh
25 or are supervisory attorneys who directed or ratified Trinh's trial related decisions, the
26 outcome is the same. The foregoing allegations demonstrate that all actions and decisions
27 by the District Attorney's office related to the initiation of judicial proceedings or occurred
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1 in the course of a supervisor’s role as an advocate for the state.⁴ *See Torres*, 793 F.3d at
2 1058. Absolute immunity applies here.

3 “Indeed, if the rule were otherwise, a plaintiff could just ‘restyle a complaint
4 charging a trial failure so that it becomes a complaint charging a failure of training or
5 supervision’ and thereby ‘eviscerate *Imbler*.’” *Id.* (quoting *Van de Kamp*, 555 U.S. at 347).
6 Accordingly, the Court finds Plaintiff’s claims against Defendant Trinh and the San Diego
7 District Attorney’s Office are barred by absolute immunity. Because absolute immunity
8 bars the entirety of Plaintiff’s claims, the Court need not reach Defendants’ remaining
9 arguments. The Court **GRANTS** Defendants’ Motion and **DISMISSES WITH**
10 **PREJUDICE** Plaintiff’s claims with regard to the San Diego District Attorney’s Office.

11 **III. Plaintiff’s Pending Motions**

12 Plaintiff has filed several motions that the Court briefly addresses. First, Plaintiff
13 filed a motion for summary judgment, (ECF No. 77). Defendants filed an Opposition brief,
14 (ECF No. 79), in which they argue, *inter alia*, that Plaintiff’s motion cannot succeed
15 because he is not entitled for judgment as a matter of law, (*id.* at 3 (citing Fed. R. Civ. P.
16 56(a))). The Court agrees; Plaintiff’s claims are barred by absolute immunity and he cannot
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19 ⁴ Even if the Court were to construe Plaintiff’s allegations as a *Monell* theory of liability, *see Monell v.*
20 *Dep’t of Soc. Servs. of the City of N.Y.*, 436 U.S. 658 (1978), they cannot succeed. “An agency or
21 department of a municipal entity is not a proper defendant under § 1983.” *Boyd v. City of Oceanside*
22 *Police Dep’t*, No. 11-CV-3039 LAB WMC, 2012 WL 993402, at *4 (S.D. Cal. Mar. 23, 2012) (citing
23 *Vance v. Cnty. of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996)). Plaintiff cannot maintain a
24 section 1983 suit against the San Diego District Attorney’s Office; he could only maintain a § 1983 claim
25 against the County of San Diego. To plead municipality liability, Plaintiff must allege: (1) he was deprived
26 of a constitutional right; (2) the municipality had a policy; (3) the policy amounted to deliberate
27 indifference to plaintiff’s constitutional right; and (4) the policy was the “moving force behind the
28 constitutional violation.” *Van Ort v. Estate of Stanewich*, 92 F.3d 831, 835 (9th Cir.1996). Here, Plaintiff
has not alleged any policy; instead, he alleges that the San Diego District Attorney’s Office made
prosecutorial decisions in his case, which is why the Court applies *Van de Kamp* in the first instance.

A separate reason for absolute immunity also applies in this case. When a county district attorney
acts in her prosecutorial capacity then she acts on behalf of the State. *See Weiner v. San Diego Cnty.*, 210
F.3d 1025, 1030 (9th Cir. 2000). And, therefore, California district attorneys possess Eleventh
Amendment immunity when “acting in [their] prosecutorial capacity.” *Del Campo v. Kennedy*, 517 F.3d
1070, 1073 (9th Cir. 2008) (alteration in original) (quoting *Weiner*, 210 F.3d at 1028; and citing *Pitts v.*
Cnty. of Kern, 17 Cal. 4th 340 (1998)).

1 prevail as a matter of law. The Court **DENIES** Plaintiff's motion for summary judgment,
2 (ECF No. 77). Second, Plaintiff filed an *ex parte* motion for FRCP 201 Judicial Notice
3 and FRCP 57 Declaratory Decree, (ECF No. 81). Plaintiff requests declaratory relief in
4 addition to his requested relief in his complaint. However, Plaintiff cannot maintain a civil
5 lawsuit against Defendants and the Court **DENIES** his *ex parte* motion, (ECF No. 81).

6 Third, Plaintiff filed an *ex parte* motion for FRCP 19 Compulsory Joinder of San
7 Diego City Attorney, (ECF No. 94). Plaintiff requests to join as new party the San Diego
8 Office of the City Attorney under Federal Rule of Civil Procedure 19. (*Id.* at 2.) Plaintiff
9 states that a non-party John Gregory Unruh,⁵ his former father-in-law, is providing false or
10 misleading statements to the City Attorney's Office, which have resulted in further criminal
11 proceedings initiated against him. (*See id.* at 3 ("Defendant Greg, through the San Diego
12 City Attorney, has now brought a Ca [Penal Code] § 166a charge against the
13 Plaintiff")) Because absolute immunity bars maintenance of a suit in its entirety,
14 Plaintiff cannot join a party to claims against Defendants. If the Court were to construe
15 Plaintiff's motion as a request for leave to amend, such an amendment would be futile.
16 The City Attorney is functionally performing prosecutorial functions. Adding a defendant
17 who is performing prosecutorial functions would be barred under absolute immunity. *See*
18 *King v. Nat'l Futures Ass'n*, 189 F.3d 473, 1999 WL 510945, at *1 (9th Cir. 1999)
19 (unpublished decision) ("In any event, his proposed addition of [a National Future
20 Association] attorney as a defendant would have been futile because officials performing
21 quasi-judicial functions are entitled to absolute immunity." (citing *Fry v. Melaragno*, 939
22 F.2d 832, 836 (9th Cir. 1991))); *Shapiro v. City of Carlsbad*, No. 11-cv-1080 DMS (MDD),
23 2011 WL 6099565, at *2 (S.D. Cal. Dec. 7, 2011) (finding amendment would be futile to
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25 ⁵ Plaintiff's motion describes Mr. Unruh as a defendant. (*See generally* ECF No. 94.) Mr. Unruh was a
26 defendant in Plaintiff's prior complaints, but was removed from his operative third amended complaint.
27 Therefore, he is not a named defendant. *See* Fed. R. Civ. P. 10(a) ("The title of the complaint must name
28 all the parties"). Claims that are voluntary dismissed are considered waived if not repled in a
subsequent complaint. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc). By
failing to name Mr. Unruh in his third amended complaint, Plaintiff waived his claim against him.

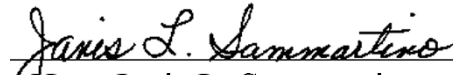
1 add individual defendants where they would be absolutely immune from malicious
2 prosecution claims (citing Cal. Gov't Code §821.6; and *Asgari v. City of Los Angeles*, 15
3 Cal. 4th 744, 753 n.7 (1997))). Accordingly, the Court **DENIES** Plaintiff's *ex parte*
4 motion, (ECF No. 91).

5 **CONCLUSION**

6 For the reasons stated above, the Court **GRANTS** Defendants' Motion to Dismiss,
7 (ECF No. 76). Accordingly, the Court **DISMISSES WITH PREJUDICE** Plaintiff's
8 Third Amended Complaint, (ECF No. 72). Because Defendants have absolute immunity,
9 further amendment of Plaintiff's claims would be futile. *See Cahill v. Liberty Mut. Ins.*
10 *Co.*, 80 F.3d 336, 339 (9th Cir. 1996) (noting denial of leave to amend is not an abuse of
11 discretion where further amendment would be futile). Additionally, the Court **DENIES**
12 Plaintiff's pending motions, (ECF Nos. 77, 81, 94). The Clerk **SHALL** close the file.

13 **IT IS SO ORDERED.**

14 Dated: September 4, 2018


15 Hon. Janis L. Sammartino
16 United States District Judge