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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DANIEL ACEDO,  
  
Plaintiff,  
  
v.  
  
COUNTY OF SAN DIEGO; PAUL  
RICHARDS; CARLOS OLMEDA;  
CAROLYN COLVIN; CALIFORNIA  
DEPARTMENT OF VITAL  
STATISTICS; CALIFORNIA  
DIRECTOR OF SOCIAL SERVICES;  
DIRECTOR OF THE CALIFORNIA  
DEPARTMENT OF CHILD SUPPORT  
SERVICES; and BOARD OF THE  
COUNTY OF SAN DIEGO,  
  
Defendants.

Case No.: 17-CV-2592 JLS (JLB)

**ORDER DISMISSING COMPLAINT  
FOR FAILING TO STATE A CLAIM  
PURSUANT TO 28 U.S.C. § 1915A**

Presently before the Court is Defendants the California Director of the California Department of Child Support Services and the California Department of Public Health Statistics and Informatics Request for Screening Order Under 28 U.S.C. § 1915A (ECF No. 80). After reviewing the Plaintiff Daniel Acedo’s First Amended Complaint (ECF No. 40), the Court **DISMISSES** Plaintiff’s Complaint in its entirety.

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1 **BACKGROUND**

2 Plaintiff Daniel Acedo, proceeding pro se, is currently an inmate at California Men’s  
3 Colony. *See generally* First Amended Complaint (“FAC”), ECF No. 40; *see also* ECF No.  
4 80 at 6.<sup>1</sup> In his FAC, Plaintiff asserted seven causes of action against Defendants Paul  
5 Richards, Carolyn Colvin, the California Department of Vital Statistics,<sup>2</sup> the California  
6 Director of Social Services, the California Director of the California Department of Child  
7 Support Services, and the Board of the County of San Diego. *See generally* FAC. Five of  
8 these causes of action remain and are now subject to this screening order.<sup>3</sup>

9 Plaintiff’s first cause of action seeks a writ of mandamus to compel Defendant  
10 Carolyn Colvin, the Commissioner of the Social Security Administration, to process his  
11 2016 application for social security child survivor benefits under 28 U.S.C § 1361 (“Claim  
12 1”). *Id.* at 5. Plaintiff alleges he submitted the application on or about September 12, 2016,  
13 but his application was never processed. *Id.* at 5–6.

14 Plaintiff’s second cause of action is for legal malpractice against Defendant Paul  
15 Richards (“Claim 2”). *Id.* at 7, 10. This claim stems from two hearings held in April and  
16 May of 2000 before the California Superior Court, Juvenile Division (“Juvenile Court”)  
17 regarding a petition to terminate Plaintiff’s biological parents’ parental rights. *Id.* at 6–7,  
18 12. Plaintiff alleges that Richards, his court appointed counsel during the hearings,  
19 provided ineffective legal services that denied him a chance at family reunification and  
20 caused him emotional distress. *Id.* at 7, 10.

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23 <sup>1</sup> Pin citations refer to the CM/ECF page numbers electronically stamped at the top of each page.

24 <sup>2</sup> The named Defendant, the California Director of California Vital Statistics, does not exist. Instead,  
25 relevant records are preserved by the California Department of Public Health Statistics and Informatics.  
*See* ECF No. 80 at 2.

26 <sup>3</sup> In earlier proceedings, Defendants County of San Diego and Mr. Olmeda moved to dismiss all claims  
27 against them. ECF No. 41. The Court granted their motion on September 23, 2019 and dismissed  
28 Plaintiff’s claims against the County and Mr. Olmeda. ECF No. 69. Plaintiff’s second cause of action as  
it pertains to the vicarious liability against the County, and Plaintiff’s third and seventh causes of action  
in their entirety, are therefore no longer at issue.

1 Plaintiff's fourth cause of action seeks to compel the California Department of  
2 Public Health Statistics and Informatics to correct his birth certificate and provide a new  
3 copy without charging a fee ("Claim 4"). *Id.* at 13–14. This claim arises out of Plaintiff's  
4 failed attempts to amend his birth certificate. *Id.* at 4, 13–14 & Ex. 2.

5 Plaintiff's fifth cause of action seeks to compel Defendant California Director of  
6 Social Services to provide a process to facilitate Plaintiff's access to state disability benefits  
7 ("Claim 5"). *Id.* at 15. Plaintiff alleges he should be receiving social security disability  
8 benefits. *Id.*

9 Plaintiff's sixth cause of action seeks to compel Defendant California Director of the  
10 California Department of Child Support Services to collect child support from Luis Manuel  
11 Acedo ("Claim 6"). *Id.* at 16. It stems from a dispute over child support. *Id.*

12 On March 13, 2020, Defendants California Director of the California Department of  
13 Child Support Services and California Department of Public Health Statistics and  
14 Informatics waived their right to reply to Plaintiff's Complaint and requested the Court  
15 screen the Complaint under 28 U.S.C. § 1915A. *See* ECF No. 80 at 1–2.

### 16 **LEGAL STANDARD**

17 Under 28 U.S.C. § 1915A, the Court is required to screen "any complaint in a civil  
18 action in which a prisoner seeks redress from a governmental entity, or office or employee  
19 of a governmental entity." As part of the required screening, the Court must *sua sponte*  
20 dismiss the complaint, or any portion of it, which is frivolous, malicious, fails to state a  
21 claim, or seeks damages from defendants who are immune. *See Lopez v. Smith*, 203 F.3d  
22 1122, 1126–27 (9th Cir. 2000) (en banc). "The purpose of [screening] is 'to ensure that  
23 the targets of frivolous or malicious suits need not bear the expense of responding.'" *Nordstrom v. Ryan*, 762 F.3d 903, 920 n.1 (9th Cir. 2014) (citations omitted).

24 "The standard for determining whether a plaintiff has failed to state a claim upon  
25 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of  
26 Civil Procedure 12(b)(6) standard for failure to state a claim." *Watison v. Carter*, 668 F.3d  
27 1108, 1112 (9th Cir. 2012). Rule 12(b)(6) requires a complaint "contain sufficient factual  
28

1 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*  
2 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

3 Detailed factual allegations are not required, but “[t]hreadbare recitals of the  
4 elements of a cause of action, supported by mere conclusory statements, do not suffice.”  
5 *Iqbal*, 556 U.S. at 678. “Determining whether a complaint states a plausible claim for relief  
6 [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
7 experience and common sense.” *Id.* The “mere possibility of misconduct” or “unadorned,  
8 the defendant-unlawfully-harmed me accusation[s]” fall short of meeting this plausibility  
9 standard. *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).  
10 Further, “[w]hile factual allegations are accepted as true, legal conclusions are not.”  
11 *Hoagland v. Astrue*, No. 1:12-cv-00973-SMS, 2012 WL 2521753, at \*3 (E.D. Cal. June  
12 28, 2012) (citing *Iqbal*, 556 U.S. at 678). Courts cannot accept legal conclusions set forth  
13 in a complaint if the plaintiff has not supported her contentions with facts. *Id.* (citing *Iqbal*,  
14 556 U.S. at 679). Finally, in deciding whether Petitioner has stated a plausible claim for  
15 relief, the Court also may consider exhibits attached to his filing. *See Fed. R. Civ. P. 10(c)*  
16 (“A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for  
17 all purposes.”); *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1555  
18 n.19 (9th Cir. 1990) (citing *Amfac Mortg. Corp. v. Ariz. Mall of Tempe, Inc.*, 583 F.2d 426  
19 (9th Cir. 1978) (noting that “material which is properly submitted as part of the complaint  
20 may be considered” in ruling on a Rule 12(b)(6) motion to dismiss)).

21 Courts have a duty to construe a pro se litigant’s pleadings liberally. *See Karim-*  
22 *Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 623 (9th Cir. 1988). In giving liberal  
23 interpretation to a *pro se* complaint, however, a court may not “supply essential elements  
24 of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673  
25 F.2d 266, 268 (9th Cir. 1982). The district court should grant leave to amend if it appears  
26 “at all possible that the plaintiff can correct the defect,” unless the court determines that  
27 “the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*,  
28 203 F.3d 1122, 1130–31 (9th Cir. 2000) (en banc) (citing *Doe v. United States*, 58 F.3d

1 494, 497 (9th Cir. 1995); *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th Cir.  
2 1990)).

## 3 ANALYSIS

### 4 I. Subject Matter Jurisdiction

5 “Federal district courts are courts of limited jurisdiction that ‘may not grant relief  
6 absent a constitutional or valid statutory grant of jurisdiction’ and are ‘presumed to lack  
7 jurisdiction in a particular case unless the contrary affirmatively appears.’” *Cooper v.*  
8 *Tokyo Elec. Power Co.*, 990 F. Supp. 2d 1035, 1038 (S.D. Cal. 2013) (quoting *A-Z Int'l v.*  
9 *Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003)). Petitioner alleges that this Court has  
10 jurisdiction over Claim 1, the claim against Carolyn Colvin, under the Mandamus and  
11 Venue Act of 1961, 28 U.S.C. § 1361. *See* FAC at 2.

12 Under § 1361, “[t]he district courts shall have original jurisdiction of any action in  
13 the nature of mandamus to compel an officer or employee of the United States or any  
14 agency thereof to perform a duty owed to the plaintiff.” “[M]andamus [is] appropriate only  
15 when a party demonstrate[s] that the [Commissioner] ‘owe[d] him a clear nondiscretionary  
16 duty.’” *Briggs v. Sullivan*, 886 F.2d 1132, 1142 (9th Cir. 1989) (quoting *Heckler v. Ringer*,  
17 466 U.S. 602, 616 (1984)) (fifth alteration in original). “Mandamus is an ‘extraordinary  
18 remedy,’” *Patel v. Reno*, 134 F.3d 929, 931 (9th Cir.1998), that “is available only when  
19 ‘(1) the plaintiff’s claim is clear and certain; (2) the duty is ministerial and so plainly  
20 prescribed as to be free from doubt; and (3) no other adequate remedy is available.’” *Lowry*  
21 *v. Barnhart*, 329 F.3d 1019, 1021 (9th Cir. 2003) (quoting *Or. Nat. Res. Council v. Harrell*,  
22 52 F.3d 1499, 1508 (9th Cir. 1995)). Further, before seeking mandamus relief, a social  
23 security claimant must exhaust all administrative remedies. *Hironymous v. Bowen*, 800  
24 F.2d 888, 893 (9th Cir. 1986).

25 The Court finds Plaintiff has failed to establish he is entitled to mandamus relief  
26 regarding Claim 1. Plaintiff alleges that the Social Security Administration (“SSA”) and,  
27 by extension the director of the SSA, Carolyn Colvin, never responded to Plaintiff’s 2016  
28 application for child survivorship benefits. *See* FAC at 5 & Ex. 1. Plaintiff, however, has

1 not demonstrated any attempt to exhaust any available administrative remedies. *See*  
2 *generally* FAC. According to Plaintiff, he did not receive any correspondence from the  
3 SSA regarding his application, yet there is no indication Plaintiff ever attempted to contact  
4 the SSA, resubmit the application, or take advantage of any other available procedures to  
5 remedy his complaint. *See id.* at 5–6. Without such a showing, the Court has no mandamus  
6 jurisdiction. *See Hironymous*, 800 F.2d at 893.

7 Moreover, before seeking judicial review of a denial of benefits under 42 U.S.C.  
8 § 405(g), Plaintiff must show “that [his] claim for benefits [was] presented to the  
9 Secretary,” and that the Secretary made a “final decision” on the claim. *See Mathews v.*  
10 *Eldridge*, 424 U.S. 319, 328 (1976). Plaintiff has not established that the Secretary has  
11 made any decision concerning his application for benefits, let alone one that is final. *See*  
12 *generally* FAC.

13 Thus, the Court concludes that it has no mandamus jurisdiction over Plaintiff’s claim  
14 against Carolyn Colvin and therefore **DISMISSES** Claim 1.

## 15 **II. Supplemental Jurisdiction**

16 Plaintiff alleges that this Court has supplemental jurisdiction over Claims 2, 4, 5,  
17 and 6—Plaintiff’s state law claims—under 28 U.S.C. § 1367(a). *See* FAC at 2–4. Under  
18 § 1367(a), “in any civil action in which the district courts have original jurisdiction, district  
19 courts shall have supplemental jurisdiction over all other claims that are so related . . . that  
20 they form part of the same case or controversy” of the claim with original jurisdiction. *See*  
21 *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966) (requiring that any  
22 supplemental claim share “a common nucleus of operative fact” with the original  
23 jurisdiction claim); *City of Chicago v. Int’l Coll. of Surgeons*, 522 U.S. 156, 165 (1997)  
24 (supplement jurisdiction is proper when “the relationship between [the federal] claim and  
25 the state claim permits the conclusion that the entire action before the court compromises  
26 but one constitutional ‘case’” (citing *Gibbs*, 383 U.S. at 725)).

27 As discussed above, the Court does not have jurisdiction over Claim 1, which is the  
28 only federal claim in this case. With the dismissal of Claim 1 for lack of subject matter

1 jurisdiction, the Court has no authority to retain jurisdiction over Plaintiff’s remaining state  
2 law claims. *See Scott v. Pasadena Unified Sch. Dist.*, 306 F.3d 646, 664 (9th Cir. 2002)  
3 (“[W]e have determined that the district court lacked subject matter jurisdiction. Thus, we  
4 have no discretion to retain supplemental jurisdiction over [the plaintiff’s] state law  
5 claims.”).

6 Moreover, even if the Court had subject matter jurisdiction over Claim 1, none of  
7 Plaintiff’s state law claims derive from “a common nucleus of operative fact.” *See*  
8 *generally* FAC; *Gibbs*, 383 U.S. at 725. Claim 1 is limited to Plaintiff’s 2016 application  
9 for social security child survivor benefits. FAC at 5. In contrast, Claim 2 arises out of the  
10 actions of Plaintiff’s court appointed legal counsel during Juvenile Court proceedings in  
11 April and May of 2000, *id.* at 6–7; Claim 4 stems from Plaintiff’s failed attempts to amend  
12 his birth certificate in 2017 and 2018, *id.* at 14 & Ex. 2; Claim 5 addresses Plaintiff’s  
13 alleged right to social security disability benefits, *id.* at 14; and, finally, Claim 6 derives  
14 from alleged nonpayment of child support, *id.* at 16. In sum, Claims 2, 4, 5 and 6 all stem  
15 from situations that are unrelated to the operative facts in Claim 1. Therefore, Claims 2, 4,  
16 5 and 6 fail to satisfy the requirements of supplemental jurisdiction.

17 Because Claim 1 failed to meet the requirements of mandamus jurisdiction, and the  
18 Court lacks discretion to retain supplemental jurisdiction over the remaining claims, the  
19 Court **DISMISSES** all of Plaintiff’s state law claims.

### 20 **III. Leave to Amend**

21 Federal Rule of Civil Procedure 15(a)(2) instructs courts to “freely give leave [to  
22 amend] when justice so requires.” Leave to amend, however, may be denied at a district  
23 court’s discretion for reasons including “futility of amendment.” *Carvalho v. Equifax Info.*  
24 *Servs., LLC*, 629 F.3d 876, 892–93 (9th Cir. 2010) (quoting *Foman v. Davis*, 371 U.S. 178,  
25 182 (1962)).

26 Here, the Court exercises its discretion to deny Plaintiff leave to amend because  
27 amendment would be futile. Plaintiff’s claim against Carolyn Colvin failed because  
28 Plaintiff did not exhaust his administrative remedies. And without jurisdiction over the

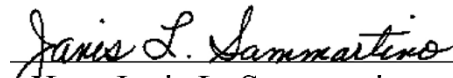
1 only federal claim, the Court has no supplemental jurisdiction over Plaintiff's unrelated  
2 state law claims. These deficiencies cannot be cured by amendment and, therefore, "there  
3 [is] no need to prolong the litigation by permitting further amendment." *See Chaset v.*  
4 *Fleer/Skybox Int'l, LP*, 300 F.3d 1083, 1088 (9th Cir. 2002). Accordingly, the Court denies  
5 leave to amend.

6 **CONCLUSION**

7 In light of the foregoing, the Court **DISMISSES WITHOUT PREJUDICE**  
8 Plaintiff's First Amended Complaint in its entirety. Plaintiff's pending motions are  
9 therefore **DENIED AS MOOT** (ECF Nos. 74, 76, 78, 82). Because amendment would be  
10 futile, the Court **DENIES** leave to amend. The Clerk of Court shall close the file.

11 **IT IS SO ORDERED.**

12 Dated: June 24, 2020

13   
14 Hon. Janis L. Sammartino  
United States District Judge