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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 DIEGO RIVERA VALENCIA,
12 Reg. No. 36322-298,

13 Plaintiff,

14 vs.

15 JOHN WEIS, District Attorney of the
16 State of California, Imperial County;
17 GILBERT G. OTERO, District Attorney,
18 Imperial County,

19 Defendants.

Case No.: 3:18-cv-01261-WQH-NLS

**ORDER DISMISSING CIVIL
ACTION FOR FAILING TO STATE
A CLAIM PURSUANT TO
28 U.S.C. § 1915(e)(2)(B)(ii) AND
28 U.S.C. § 1915A(b)(1)**

20 On May 16, 2018, Plaintiff Diego Rivera Valencia (“Plaintiff”), a federal prisoner
21 incarcerated at the Federal Correctional Institution Terminal Island, in San Pedro,
22 California, and proceeding pro se, filed a civil rights Complaint pursuant to 42 U.S.C.
23 § 1983 in the Central District of California. *See* Compl., ECF No. 1.

24 **I. Procedural History**

25 On June 6, 2018, United States Magistrate Judge Shashi H. Kewalramani granted
26 Plaintiff’s request to proceed *in forma pauperis* (“IFP”) (ECF No. 6), and on June 11, 2018,
27 transferred the case for lack of proper venue to the Southern District of California pursuant
28 to 28 U.S.C. § 1406(a) (ECF No. 7). While Judge Kewalramani noted the events giving

1 rise to Plaintiff's action are alleged to have occurred in El Centro, California, and both
2 Defendants are alleged to reside there, she did not otherwise conduct the mandatory initial
3 screening of Plaintiff's Complaint as required by 28 U.S.C. § 1915(e)(2) and § 1915A(b).

4 **II. Initial Screening**

5 A. Standard of Review

6 Because Plaintiff is a prisoner and is proceeding IFP, his Complaint requires a pre-
7 answer screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b). Under these statutes,
8 the Court must sua sponte dismiss a prisoner's IFP complaint, or any portion of it, which
9 is frivolous, malicious, fails to state a claim, or seeks damages from defendants who are
10 immune. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (discussing
11 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010)
12 (discussing 28 U.S.C. § 1915A(b)). "The purpose of [screening] is 'to ensure that the
13 targets of frivolous or malicious suits need not bear the expense of responding.'" *Nordstrom v. Ryan*,
14 762 F.3d 903, 920 n.1 (9th Cir. 2014) (quoting *Wheeler v. Wexford*
15 *Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)).

16 "The standard for determining whether a plaintiff has failed to state a claim upon
17 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of
18 Civil Procedure 12(b)(6) standard for failure to state a claim." *Watison v. Carter*, 668 F.3d
19 1108, 1112 (9th Cir. 2012); *see also Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir.
20 2012) (noting that screening pursuant to § 1915A "incorporates the familiar standard
21 applied in the context of failure to state a claim under Federal Rule of Civil Procedure
22 12(b)(6)"). Rule 12(b)(6) requires a complaint "contain sufficient factual matter, accepted
23 as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S.
24 662, 678 (2009) (internal quotation marks omitted); *Wilhelm*, 680 F.3d at 1121. Detailed
25 factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of
26 action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

27 "Determining whether a complaint states a plausible claim for relief [is] ... a context-
28 specific task that requires the reviewing court to draw on its judicial experience and

1 common sense.” *Id.* The “mere possibility of misconduct” or “unadorned, the defendant-
2 unlawfully-harmed me accusation[s]” fall short of meeting this plausibility standard. *Id.*;
3 *see also Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009).

4 B. Plaintiff’s Allegations

5 Plaintiff claims that on August 9, 2012, at his arraignment in *United States v. Diego*
6 *Rivera-Valencia*, S.D. Cal. Criminal Case No. 3:12-cr-03547-CAB-1, before United States
7 Magistrate Judge Peter C. Lewis in El Centro, California, Defendant John Weis, an
8 Imperial County Deputy District Attorney, appeared and requested “to be the reader of the
9 charges” upon which Plaintiff was to be arraigned. *See* Compl., ECF No. 1 at 1, 10. Plaintiff
10 contends Weis “had no business in the federal court that day,” but claimed he “need[ed] to
11 be [t]here,” so he could “have full satisfaction, and peace of mind.” *Id.* at 6, 10. Plaintiff
12 claims Weis had not been called as a witness to the matter, spoke “out of turn,” and tried
13 to “ambush” Judge Lewis and the “District Federal Attorney,” by “slandering” him in open
14 court, and making it “sound like” he was the “head of the mob of Imperial ... Valley” and
15 “public enemy number one.” *Id.* at 10, 12, 16.

16 Plaintiff’s only allegation as to Defendant Gilbert G. Otero, the Imperial County
17 District Attorney, is that he gave Weis the day off to attend Plaintiff’s arraignment. *Id.* at
18 3. Plaintiff admits he was represented by a federal public defender at the time, but claims
19 he “fired” her for failing to object. *Id.* at 15. He now seeks “20 million d[o]llars” in damages
20 pursuant to 42 U.S.C. § 1983 because Weis’s slander allegedly confused him, caused him
21 to misunderstand his *Miranda* warnings, and violated his Fourth, Fifth, and Fourteenth
22 Amendments rights. *Id.* at 12, 14-16.¹

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25 ¹ The Court takes judicial notice of the docketed proceedings in *United States v. Diego*
26 *Rivera-Valencia*, S.D. Cal. Criminal Case No. 3:12-cr-03547-CAB-1, ECF No. 1, Compl.,
27 filed July 27, 2012. *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (court ““may
28 take notice of proceedings in other courts, both within and without the federal judicial
system, if those proceedings have a direct relation to matters at issue.””) (citation omitted);
see also McQuillion v. Schwarzenegger, 369 F.3d 1091, 1094 (9th Cir. 2004) (taking

1 C. 42 U.S.C. § 1983

2 “Section 1983 creates a private right of action against individuals who, acting under
3 color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*,
4 263 F.3d 1070, 1074 (9th Cir. 2001). Section 1983 “is not itself a source of substantive
5 rights, but merely provides a method for vindicating federal rights elsewhere conferred.”
6 *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (internal quotation marks and citations
7 omitted). “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a right
8 secured by the Constitution and laws of the United States, and (2) that the deprivation was
9 committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 698
10 F.3d 1128, 1138 (9th Cir. 2012).

11 First, Plaintiff claims both Defendants Weis and Otero are Imperial County District
12 Attorneys. *See* Compl., ECF No. 1 at 3. But he fails to allege that either acted in his official
13 capacity and “under color of state law” on August 9, 2012—the day he contends Weis
14 appeared on his “day off” at Plaintiff’s arraignment in United States District Court in El
15 Centro. *Id.* at 3, 12. In fact, Plaintiff explicitly seeks to sue both Weis and Otero in their
16 individual capacities only. *Id.* at 1, 2. A person “acts under color of state law [for purposes
17 of § 1983] only when exercising power ‘possessed by virtue of state law and made possible
18 only because the wrongdoer is clothed with the authority of state law.’” *Polk County v.*
19 *Dodson*, 454 U.S. 312, 317-18 (1981) (quoting *United States v. Classic*, 313 U.S. 299, 326
20 (1941)).

21 For this reason alone, his Complaint must be dismissed for failing to state a claim
22 upon which § 1983 can be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii); § 1915A(b)(1);
23 *Watison*, 668 F.3d at 1112; *Wilhelm*, 680 F.3d at 1121; *Woldmskel v. Keg N Bottle Liquor*
24 *Store*, No. 15-CV-2469 WQH (PCL), 2016 WL 245850, at *3 (S.D. Cal. Jan. 21, 2016)
25 (dismissing § 1983 claims sua sponte against defendants not alleged to have acted under

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28 judicial notice of district court proceedings to determine whether prior alleged § 1983
claims were dismissed pursuant to *Heck v. Humphrey*, 512 U.S. 477 (1994)).

1 color of state law pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A(b)).

2 D. Slander and Defamation

3 Second, to the extent Plaintiff claims Defendant Weis “slandered” him during a
4 federal pretrial proceeding, *see* Compl., ECF No. 1 at 6, 12, he fails to allege the deprivation
5 of any constitutional right. *See Paul v. Davis*, 424 U.S. 693, 699-701 (1976) (holding
6 defamation is not actionable under § 1983); *Hernandez v. Johnson*, 833 F.2d 1316, 1319
7 (9th Cir. 1987) (holding that libel and slander claims are precluded by *Paul*); *Whatley v.*
8 *Gray*, 2018 WL 828200, at *2 (S.D. Cal. Feb. 8, 2018).

9 E. *Heck v. Humphrey*’s Favorable Termination Rule

10 Third, to the extent Plaintiff also claims Weis’s statements caused him “to be[come]
11 confuse[d],” and resulted in a misunderstanding of his Fourth, Fifth and Fourteenth
12 Amendment rights during arraignment, *see* Compl., ECF No. 1 at 14, 16, a § 1983 suit is
13 not the proper vehicle through which to mount what is essentially a collateral challenge to
14 the validity of his federal criminal conviction. *See Heck v. Humphrey*, 512 U.S. 477, 484-
15 85 (1994).

16 In *Heck*, the Supreme Court held that:

17 ... in order to recover damages for allegedly unconstitutional conviction or
18 imprisonment, or for other harm caused by actions whose unlawfulness would
19 render a conviction or sentence invalid, a § 1983 plaintiff must prove that the
20 conviction or sentence has been reversed on direct appeal, expunged by
21 executive order, declared invalid by a state tribunal authorized to make such
determination, or called into question by a federal court’s issuance of a writ
of habeas corpus.

22 *Id.* at 486-87. Therefore, “where a prisoner file[s] a civil suit seeking purely money
23 damages related to an allegedly unlawful conviction,” *Heck* bars the suit if awarding those
24 damages “would undermine the validity of the underlying conviction,” and the entire action
25 must be dismissed. *Washington v. Los Angeles Cty. Sheriff’s Dep’t*, 833 F.3d 1048, 1057
26 (9th Cir. 2016) (citing *Heck*, 512 U.S. at 486-87, 489). *Heck* arose in the context of a state
27 court conviction, but its rationale applies to federal convictions as well. *See Martin v. Sias*,
28 88 F.3d 774, 775 (9th Cir. 1996).

1 “Suits challenging the validity of the prisoner’s continued incarceration lie within
2 ‘the heart of habeas corpus,’ whereas ‘a § 1983 action is a proper remedy for [...]
3 prisoner[s] who ... mak[e] [] constitutional challenge[s] to the conditions of [] prison life,
4 *but not to the fact or length of [their] custody.*” *Ramirez v. Galaza*, 334 F.3d 850, 856 (9th
5 Cir. 2003) (emphasis added) (quoting *Preiser v. Rodriguez*, 411 U.S. 475, 498-99 (1973)).

6 Thus, because Plaintiff does not allege to have already invalidated his conviction or
7 sentence in *United States v. Diego Rivera-Valencia*, S.D. Cal. Criminal Case No. 3:12-cr-
8 03547-CAB-1, either by way of direct appeal, executive order, or through the issuance of
9 a federal court writ of habeas corpus, *Heck*, 512 U.S. at 487, his current Complaint must
10 be dismissed in its entirety for failing to state a claim upon which § 1983 relief can be
11 granted pursuant to 28 U.S.C. § 1915(e)(2)(b)(ii) and § 1915A(b)(1). *See Phillipi v. Does*,
12 No. CIV. 11-2612 DMS RBB, 2011 WL 6400303, at *2 (S.D. Cal. Dec. 20, 2011) (sua
13 sponte dismissing civil rights action pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A
14 because “habeas corpus is the exclusive federal remedy whenever the claim for damages
15 depends on a determination that ... the sentence currently being served is
16 unconstitutionally long.”) (citing *Edwards v. Balisok*, 520 U.S. 641, 643-44 (1997); *Heck*,
17 512 U.S. at 486-87; *Preiser*, 411 U.S. at 500).

18 F. Leave to Amend

19 Finally, while the Court would typically grant Plaintiff leave to amend in light of his
20 pro se status, it concludes doing so under the circumstances would be futile. *See Lopez*,
21 203 F.3d at 1127; *Schmier v. U.S. Court of Appeals for the Ninth Circuit*, 279 F.3d 817,
22 824 (9th Cir. 2002) (recognizing “[f]utility of amendment” as a proper basis for dismissal
23 without leave to amend).

24 Amendment is futile because even if Plaintiff could allege facts sufficient to
25 plausibly show Defendants violated his Fourth, Fifth, and Fourteenth Amendment rights
26 during his August 9, 2012 arraignment, his claims for damages under § 1983 could still not
27 yet proceed because he waived his right to collaterally attack his conviction as part of his
28 plea in *United States v. Diego Rivera-Valencia*, S.D. Cal. Criminal Case No. 3:12-cr-

1 03547-CAB-1, his Motion to Reduce Sentence pursuant to 18 U.S.C. § 3582(a)(2) in that
2 case has previously been denied, and his recently-filed “Motion to Vacate or Dismiss” that
3 case pursuant to 28 U.S.C. § 2255, which appears to challenge his conviction based on the
4 some of the same claims raised in this § 1983 suit, still remains pending before the
5 Honorable Cathy Ann Bencivengo, the district judge who sentenced him on November 19,
6 2012. *See id.*, ECF Nos. 27-28, 33, 37, 39; *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th
7 Cir. 2015) (leave to amend is not required if it is “absolutely clear that the deficiencies of
8 the complaint could not be cured by amendment.”) (internal citations omitted).

9 **III. Conclusion and Order**

10 Accordingly, the Court:

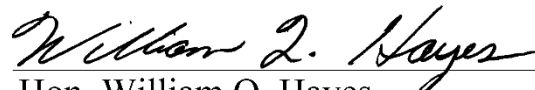
11 1) **DISMISSES** Plaintiff’s Complaint sua sponte without prejudice, but without
12 leave to amend,² based on his failure to state a claim upon which § 1983 relief can be
13 granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and § 1915A(b)(1);

14 2) **CERTIFIES** that an IFP appeal of this Order would not be taken in good faith
15 pursuant to 28 U.S.C. § 1915(a)(3); and

16 3) **DIRECTS** the Clerk of the Court to enter judgment and terminate the case.

17 **IT IS SO ORDERED.**

18 Dated: September 19, 2018

19 
20 Hon. William Q. Hayes
21 United States District Court

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26 ² *See Trimble v. City of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995) (court should dismiss
27 claims barred by *Heck* without prejudice “so that [the plaintiff] may reassert his claims if
28 he ever succeeds in invalidating his conviction.”); *Briggs v. Enriquez*, No. CV 17-4615-
FMO(E), 2017 WL 6210802, at *4 (C.D. Cal. Nov. 1, 2017), *report and recommendation*
adopted, No. CV 17-4615-FMO(E), 2017 WL 6209818 (C.D. Cal. Dec. 7, 2017).