EXHIBIT 1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 23 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MITCHELL TAEBEL,

Plaintiff-Appellant,

v.

MARICOPA COUNTY ATTORNEY'S OFFICE; et al.,

Defendants-Appellees.

No. 19-15023

D.C. No. 2:18-cv-02496-JAT-ESW
District of Arizona, Phoenix

ORDER

Before: O'SCANNLAIN, W. FLETCHER, and WATFORD, Circuit Judges.

Upon a review of the record and the responses to the court's January 8, 2019 order to show cause, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Appellant's motion for an injunction (Docket Entry No. 7) is denied as moot.

DISMISSED.

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mitchell Taebel,

Plaintiff,

v.

Maricopa County Attorney's Office, et al.,

Defendants.

NO. CV-18-02496-PHX-JAT (ESW)

JUDGMENT OF DISMISSAL IN A CIVIL CASE

Decision by Court. This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that pursuant to the Court's Order filed December 13, 2018, Plaintiff's First Amended Complaint is **dismissed** pursuant to *Younger v. Harris*, 401 U.S. 37 (1971) and this matter is hereby terminated.

Brian D. Karth
District Court Executive/Clerk of Court

December 13, 2018

By s/ L. Dixon
Deputy Clerk

ASH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Mitchell Taebel,

Plaintiff,

v.

Maricopa County Attorney's Office, et al.,

Defendants.

No. CV 18-02496-PHX-JAT (ESW)

ORDER

On or about July 19, 2018, Plaintiff Mitchell Taebel, who is confined in a Maricopa County Jail, filed a pro se Complaint in Maricopa County Superior Court. Defendants were served shortly thereafter, and, on August 7, 2018, timely removed the matter to this Court and paid the filing fee. By Order dated August 24, 2018, the Court accepted jurisdiction, but dismissed the Complaint for failure to comply with Rule 3.4 of the Local Rules of Civil Procedure. Plaintiff was provided with 30 days in which to file an amended complaint that cured the deficiencies identified in the Order.

Plaintiff has now filed a First Amended Complaint (Doc. 16). Plaintiff has also filed an omnibus motion for discovery, default judgment, bail reduction, and summary judgment (Doc. 8), a Motion to Change Judge (Doc. 11), two motions for "Arrest Warrants" (Docs. 13 and 14), and a Motion for Preliminary Injunction (Doc. 15).

I. Motion to Change Judge

Title 28, Section 455(a) provides that a United States judge "shall disqualify" himself in any proceeding in which his "impartiality might reasonably be questioned."

Section 455(b)(1) provides that a judge must also disqualify himself where he "has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding[.]" Recusal pursuant to § 455(b) is required only if the bias or prejudice stems from an extra-judicial source, not from conduct or rulings during the course of the proceedings. *See Hasbrouck v. Texaco, Inc.*, 842 F.2d 1034, 1046 (9th Cir. 1987), *aff'd*, 496 U.S. 543 (1990); *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986) (judge's prior adverse rulings are insufficient cause for recusal). "[J]udicial rulings alone almost never constitute [a] valid basis for a bias or partiality motion." *Liteky v. United States*, 114 S. Ct. 1147, 1157 (1994). Adverse rulings should be appealed; they do not form the basis for a recusal motion. Further, where the judge forms opinions in the courtroom, either in the current proceeding or in a prior proceeding, these opinions "do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.*

Title 28, Section 144 provides for recusal where a party files a "timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party." The affidavit must state the facts and reasons for the belief that the bias or prejudice exists. 28 U.S.C. § 144. If the judge finds the affidavit timely and legally sufficient, the judge must proceed no further and another judge must be assigned to hear the motion. *Id.*; *United States v. Sibla,* 624 F.2d 864, 867 (9th Cir. 1980).

Here, Plaintiff has not demonstrated that recusal pursuant to either §455 or §144 is warranted. Plaintiff has not alleged any evidence to support that the undersigned's partiality might reasonably be questioned. Nor has Plaintiff identified any extra-judicial source of any bias or prejudice. Further, Plaintiff has failed to provide the affidavit required by § 144, or to state the facts and reasons, under oath, for why he believes that the undersigned has any bias or prejudice against him. Accordingly, recusal is not appropriate, and Plaintiff's Motion will be denied.

. . . .

II. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

A pleading must contain a "short and plain statement of the claim *showing* that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not demand detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

"[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. Thus, although a plaintiff's specific factual allegations may be consistent with a constitutional claim, a court must assess whether there are other "more likely explanations" for a defendant's conduct. *Id.* at 681.

But as the United States Court of Appeals for the Ninth Circuit has instructed, courts must "continue to construe *pro se* filings liberally." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A "complaint [filed by a pro se prisoner] 'must be held to less stringent standards than formal pleadings drafted by lawyers.'" *Id.* (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

III. First Amended Complaint

In his three-count First Amended Complaint, Plaintiff names the Maricopa County Attorney's Office, Maricopa County Attorney William G. Montgomery, Deputy Maricopa County Attorney Aaron Harder, Maricopa County, and Arizona Governor Doug Ducey as Defendants. Plaintiff seeks "a preventative injunction against a malicious [and] unlawful prosecution," and "$250 billion USD" in damages. Plaintiff makes claims related to "false imprisonment by excessive bail" (Count One), "malicious and unlawful prosecution" (Count Two), and "fraud by the Maricopa County Attorney's Office" (Count Three).

IV. Failure to State a Claim

To prevail in a § 1983 claim, a plaintiff must show that (1) acts by the defendants (2) under color of state law (3) deprived him of federal rights, privileges or immunities and (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir. 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm'n*, 42 F.3d 1278, 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific injury as a result of the conduct of a particular defendant and he must allege an affirmative link between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

As an initial matter, Plaintiff makes no allegations against Defendants Harder, Ducey, or the County of Maricopa; indeed, Plaintiff makes no mention of them at all in his First Amended Complaint. Accordingly, these Defendants will be dismissed.

More importantly, however, the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971), prevents a federal court in most circumstances from directly interfering with ongoing criminal proceedings in state court. The *Younger* abstention doctrine continues to apply while a case works its way through the state appellate process. *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 369 (1989) ("[f]or *Younger* purposes, the State's trial-and-appeals process is treated as a unitary system"); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 608 (1975) ("Virtually all of the evils at which *Younger* is directed would inhere in federal intervention prior to completion of state appellate proceedings, just as surely as they would if such intervention occurred at or before

trial.")

"Three requirements have evolved for proper invocation of *Younger*: (1) ongoing state judicial proceedings; (2) implication of an important state interest in the proceedings, and; (3) an adequate opportunity to raise federal questions in the proceedings." *World Famous Drinking Emporium v. City of Tempe*, 820 F.2d 1079, 1082 (9th Cir. 1987) (citation omitted).

Based on these criteria, *Younger* abstention is appropriate here. The State's interest in prosecuting Plaintiff is obvious.[1] Plaintiff can adequately litigate his underlying claims related to the propriety of his present prosecution in his ongoing state criminal proceedings. Conversely, the potential for federal-state friction resulting from federal intervention is heightened should this Court interfere with those proceedings. Put another way, if relief is available to Plaintiff in connection with his state criminal proceedings, it lies in the state court. When Plaintiff's state court criminal proceedings have concluded, Plaintiff may seek relief in federal court for any denial of a federally protected right through a petition for writ of habeas corpus. However, Plaintiff should note that federal courts will not entertain a habeas petition until Plaintiff has exhausted his state court remedies, *Rose v. Lundy*, 455 U.S. 509 (1982), and any claim for damages will be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), unless Plaintiff can demonstrate his conviction has previously been reversed or otherwise invalidated, because such a judgment in favor of Plaintiff on these issues would necessarily imply the invalidity of his conviction or sentence.

Accordingly, the First Amended Complaint and this action will be dismissed pursuant to *Younger*. Plaintiff's various remaining motions will be denied as moot.

IT IS ORDERED:

---

[1] Petitioner has been charged with two counts of aggravated assault with a deadly weapon, two counts of unlawful flight from a law enforcement vehicle, and three counts of endangerment. His prosecution appears to remain ongoing. *See* Maricopa County Superior Court Docket in case no. CR2019-104-389 (*available at* http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseInfo.asp?caseNumber= CR2018-104389) (*last visited* December 10, 2018).

(1) Plaintiff's Motion to Change Judge (Doc. 11) is **denied**.

(2) Plaintiff's First Amended Complaint is **dismissed** pursuant to *Younger v. Harris*, 401 U.S. 37 (1971), and the Clerk of Court must enter judgment accordingly.

(3) Plaintiff's omnibus motion for discovery, default judgment, bail reduction, and summary judgment (Doc. 8), two motions for "Arrest Warrants" (Docs. 13 and 14), and Motion for Preliminary Injunction (Doc. 15) are **denied as moot**.

(4) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal of this decision would be taken in good faith and certifies that an appeal would not be taken in good faith for the reasons stated in the Order and because there is no arguable factual or legal basis for an appeal.

Dated this 13th day of December, 2018.

James A. Teilborg
Senior United States District Judge

Additional material from this filing is available in the Clerk's Office.