

APPENDIX

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUL 24 2023

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

WAYNE JOHNSON, Esquire,

Plaintiff-Appellant,

v.

CONTRA COSTA COUNTY CLERK
RECODER; DEBORAH COOPER;
PATRICIA D. MALONE, Court Reporter;
ESA EHLEN KRAUSE, Chief Probation
Officer; COUNTY OF CONTRA COSTA,

Defendants-Appellees.

No. 22-16290

D.C. No. 3:21-cv-07579-JSC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Jacqueline Scott Corley, District Judge, Presiding

Submitted July 18, 2023**

Before: SCHROEDER, RAWLINSON, and BADE, Circuit Judges.

Wayne Johnson appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging violations of the Fourth, Eighth, and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

APP. 1

Fourteenth Amendments. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Glazer Cap. Mgmt., L.P. v. Forescout Techs., Inc.*, 63 F.4th 747, 763 (9th Cir. 2023) (dismissal under Federal Rule of Civil Procedure 12(b)(6)); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order) (dismissal under 28 U.S.C. § 1915(e)(2)). We affirm.

The district court properly dismissed Johnson's claims against the Court Clerk and Court Reporter because both defendants are entitled to quasi-judicial immunity. *See Acres Bonusing, Inc v. Marston*, 17 F.4th 901, 916 (9th Cir. 2021) (“Court clerks have absolute quasi-judicial immunity from damages for civil rights violations when they perform tasks that are an integral part of the judicial process.” (citation omitted)); *Wright v. Beck*, 981 F.3d 719, 738 (9th Cir. 2020) (explaining that “immunity applies when a non-judicial officer performs a non-discretionary or administrative function at the explicit direction of a judicial officer” (citation and internal quotation marks omitted and alteration adopted)).

The district court properly dismissed Johnson's claim against defendants Ehmen-Krause and Contra Costa County because Johnson failed to allege facts sufficient to state a plausible claim and defendant Ehmen-Krause is entitled to absolute judicial immunity. *See Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (a court is not required to accept conclusions and speculation in adjudicating a motion to dismiss); *Lockett v. County of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020)

(explaining that *Monell* claims are contingent on a violation of constitutional rights); *Demoran v. Witt*, 781 F.2d 155, 157 (9th Cir. 1986) (absolute judicial immunity extends to probation officers preparing reports for the use of state courts).

The district court did not abuse its discretion by dismissing Johnson's second amended complaint without further leave to amend because amendment would be futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper if amendment would be futile); *Fid. Fin. Corp. v. Fed. Home Loan Bank of S.F.*, 792 F.2d 1432, 1438 (9th Cir. 1986) ("The district court's discretion to deny leave to amend is particularly broad where the court has already given the plaintiff an opportunity to amend [the] complaint.").

AFFIRMED.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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WAYNE JOHNSON,

Case No. 21-cv-07579-JSC

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Plaintiff,

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v.

JUDGMENT

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ESA EHMEN KRAUSE, et al.,

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Defendants.

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The Court, having granted Defendants' motion to dismiss by Order filed August 11, 2022,
enters judgment in favor of Defendants and against Plaintiff.

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IT IS SO ORDERED.

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Dated: August 11, 2022

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JACQUELINE SCOTT CORLEY

United States District Judge

- APP. 4

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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WAYNE JOHNSON,

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Plaintiff,

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v.

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ESA EHΜΕΝ KRAUSE, et al.,

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Defendants.

Case No. 21-cv-07579-JSC

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 17

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Pending before the Court is the motion to dismiss of Defendants Esa Ehmen-Krause and Contra Costa County. (Dkt. No. 17.) After reviewing the parties' submissions, and having the benefit of oral argument on August 11, 2022, the Court GRANTS the motion to dismiss without leave to amend.

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PROCEDURAL HISTORY

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Wayne Johnson, a former attorney, filed this action without representation by a practicing attorney. The Court reviewed the complaint pursuant to 28 U.S.C. § 1915, explained why the three causes of action failed, and gave Mr. Johnson the opportunity to cure the defects if he thought he could do so. (Dkt. No. 7.) Thereafter, Mr. Johnson filed a First Amended Complaint and a legal brief. (Dkt. Nos. 9, 10.) The Court reviewed both pursuant to 28 U.S.C. § 1915 and concluded that Mr. Johnson's first and second causes of action fail as a matter of law. As to the third cause of action against Probation Officer Esa Ehmen-Krause and Contra Costa County, the Court concluded that more factual allegations were needed. (Dkt. No. 12.) Mr. Johnson was thus given an opportunity to amend once again and he filed a Second Amended Complaint on March 21, 2022. (Dkt. No. 13.)

The Court reviewed the Second Amended Complaint pursuant to 28 U.S.C. § 1915,

1 his opposition to the motion to dismiss. Nothing in that submission suggests that Mr. Johnson can
2 allege facts—as opposed to speculative conclusions—that plausibly support an inference that
3 Contra Costa County or any probation officer violated his constitutional rights. Indeed, much of
4 his submission focuses on challenging his convictions. The California Court of Appeal, however,
5 recently upheld the convictions. *People v. Johnson*, No. A159389, 2022 WL 1683673 (Cal. Ct.
6 App. May 26, 2022).

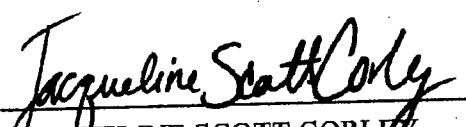
7 Accordingly, Defendants' motion to dismiss is GRANTED without leave to amend.
8 Defendants' administrative motion to file under seal is GRANTED.

9 This Order disposes of Docket Nos. 17, 20.

10 **IT IS SO ORDERED.**

11 Dated: August 11, 2022

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JACQUELINE SCOTT CORLEY
United States District Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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WAYNE JOHNSON,

Case No. 21-cv-07579-JSC

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Plaintiff,

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v.

**SCREENING ORDER PURSUANT TO
28 U.S.C. § 1915**

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CONTRA COSTA COUNTY CLERK
RECORDER, et al.,

Re: Dkt. No. 9

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Defendants.

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The Court previously granted Plaintiff's motion to proceed *in forma pauperis* and gave him the opportunity to amend his complaint to cure the deficiencies identified in the 28 U.S.C. § 1915 screening. (Dkt. Nos. 4, 7.)¹ The Court now reviews Plaintiff's amended complaint pursuant to 28 U.S.C. § 1915. (Dkt. No. 9.)

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COMPLAINT ALLEGATIONS

14

Plaintiff brings various constitutional claims, including violations of the Fourth, Eighth, and Fourteenth Amendments, relating to a void restraining order and his criminal conviction for violating that order. He also cites 42 U.S.C. §§ 1983 and 1988, as well as the California constitution and common law. (*Id.* ¶¶ 5, 7-8.)

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A five-year restraining order was issued against Plaintiff on October 2, 2018. Plaintiff had no notice of the proceedings and no temporary restraining order had been issued. Thereafter, a Contra Costa County judge issued an arrest warrant based on false claims that Plaintiff had violated the restraining order. U.S. Marshals arrested Plaintiff on January 3, 2019 and he was released on bail on January 5, 2019. On March 4, 2019, Plaintiff appeared in court where the

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¹ Record citations are to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 judge “revoked Plaintiff’s bail and remanded him to custody.” (*Id.* ¶ 37.)

2 Plaintiff’s criminal trial took place between September 4 and December 20, 2019. (*Id.* ¶
3 73.) Plaintiff was “held without bond for the entire trial and prevented from locating crucial
4 witnesses and evidence.” (*Id.* ¶ 38.) During the trial, the presiding judge “ordered the court
5 reporter to not make a record of [Plaintiff’s] objection” and “continually obstructed justice and
6 manufactured roadblocks to Plaintiff’s fair trial.” (*Id.* ¶ 40.) He was convicted and incarcerated at
7 San Quentin State Penitentiary. (*See id.* ¶ 42.)

8 After his conviction, the California Court of Appeal voided the restraining order against
9 Plaintiff on January 3, 2020. Plaintiff was released from prison on April 1, 2021. (*See id.* ¶ 88.)
10 The Probation Officer “fabricated a story” about Plaintiff “living homeless in Contra Costa
11 County.” (*Id.* ¶ 23.) The Probation Officer knew that Plaintiff was a lifelong resident and
12 business owner in Alameda County. The falsehood was designed to harm Plaintiff by placing him
13 away from family and healthcare providers who treated his advanced coronary disease. As a
14 result, Plaintiff was released to Red Bluff, California for two weeks where he was homeless and
15 without food or means of support.

16 Plaintiff’s requested relief includes compensatory and general damages in the amount of
17 \$1,007,100; changes to Contra Costa County’s policies; punitive damages against all Defendants
18 in the amount of \$500,000; attorney’s fees; and trial by jury. (*Id.* at 17.) Plaintiff’s “underlying
19 conviction in cases 01-188003 and 0051905-90 are currently on Appeal in People v. Johnson
20 A159389, and there is an accompanying Petition for Writ Of Habeas Corpus also pending
21 associated with that appeal.” (*Id.* ¶ 14.)

22 **LEGAL STANDARD**

23 The Court has a continuing duty to dismiss any case in which a party is proceeding *in*
24 *forma pauperis* upon a determination that the case is: (1) frivolous or malicious, (2) fails to state a
25 claim on which relief may be granted, or (3) seeks monetary relief against a defendant who is
26 immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The standard of review under 28 U.S.C.
27 §1915(e)(2) mirrors that of Federal Rule of Civil Procedure 12(b)(6). *Lopez v. Smith*, 203 F.3d
28 1122, 1126–27 (9th Cir. 2000). Thus, the complaint must allege “enough facts to state a claim to

1 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A facial
2 plausibility standard is not a “probability requirement” but mandates “more than a sheer
3 possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
4 (cleaned up). To avoid dismissal, a complaint must contain more than “naked assertion[s],”
5 “labels and conclusions,” or “a formulaic recitation of the elements of a cause of action.”
6 *Twombly*, 550 U.S. at 555–57. “A claim has facial plausibility when the plaintiff pleads factual
7 content that allows the court to draw the reasonable inference that the defendant is liable for the
8 misconduct alleged.” *Iqbal*, 556 U.S. at 678.

9 A complaint must contain “a short and plain statement of the claim showing that the
10 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Moss v. Infinity Ins. Co.*, No. 15-cv-
11 03456-JSC, 2015 WL 5360294, at *2 (N.D. Cal. Sept. 14, 2015). “While the federal rules require
12 brevity in pleading, a complaint nevertheless must be sufficient to give the defendants ‘fair notice’
13 of the claim and the ‘grounds upon which it rests.’” *Coleman v. Beard*, No. 14-CV-05508-YGR
14 (PR), 2015 WL 395662, at *4 (N.D. Cal. Jan. 29, 2015) (quoting *Erickson v. Pardus*, 551 U.S. 89,
15 93 (2007)). A complaint that fails to state a defendant’s specific acts “that violated the plaintiff’s
16 rights fails to meet the notice requirements of Rule 8(a).” *Medina Chiprez v. Becerra*, No. 20-CV-
17 00307-YGR (PR), 2020 WL 4284825, at *3 (N.D. Cal. July 27, 2020) (citing *Hutchinson v.*
18 *United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982)).

19 Further, when a plaintiff files a complaint without representation by a lawyer, the Court
20 must “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe*
21 *v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (cleaned up). “A district court should not dismiss a
22 pro se complaint without leave to amend unless it is absolutely clear that the deficiencies of the
23 complaint could not be cured by amendment.” *Rosati v. Igbinoso*, 791 F.3d 1037, 1039 (9th Cir.
24 2015) (cleaned up).

25 DISCUSSION

26 Plaintiff pleads three claims arising from: (1) the Court Clerk’s entry of the unlawful
27 restraining order, (2) the Court Reporter’s failure to record Plaintiff’s objections during trial, and
28 (3) the Probation Officer’s intentional inclusion of false information in Plaintiff’s probation report.

1 “Section 1983 provides a cause of action for ‘the deprivation of any rights, privileges or
2 immunities secured by the Constitution and laws’ of the United States.” *Wilder v. Va. Hosp.
3 Ass’n*, 496 U.S. 498 (1990) (quoting 42 U.S.C. § 1983). “Section 1983 is not itself a source of
4 substantive rights, but merely provides a method for vindicating federal rights elsewhere
5 conferred.” *Graham v. Connor*, 490 U.S. 386, 393–94 (1989) (cleaned up). To state a claim
6 under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by
7 the Constitution or laws of the United States was violated, and (2) that the alleged violation was
8 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

9 A. **First Cause of Action: Court Clerk**

10 According to the amended complaint, a judge issued a five-year restraining order against
11 Plaintiff on October 2, 2018; Plaintiff challenges the Court Clerk’s entry of that order. Plaintiff
12 alleges that “any sworn clerk knows that a restraining order cannot be issued without serving a
13 [temporary restraining order].” (Dkt. No. 9 ¶ 64.) He emphasizes that, on appeal, the restraining
14 order was determined not merely voidable but “void from its inception,” such that the Clerk
15 should not have issued it in the first place. (*Id.*)

16 The amended complaint does not allege facts that plausibly support an inference that the
17 Clerk performed her duty improperly. Rather, it alleges that the Clerk entered the order as
18 directed by the judge. As such, Plaintiff’s claim is barred by absolute quasi-judicial immunity.
19 The immunity “applies when a non-judicial officer performs a non-discretionary or administrative
20 function . . . at the explicit direction of a judicial officer.” *Wright v. Beck*, 981 F.3d 719, 738 (9th
21 Cir. 2020) (cleaned up). Entry of a restraining order issued by a judge is a “purely administrative
22 act,” which “when viewed in context [is] actually a part of the judicial function” of resolving
23 disputes and entering orders. *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002) (bankruptcy trustee
24 immune from suit related to scheduling and notice of hearing); *see also Moore v. Brewster*, 96
25 F.3d 1240, 1244 (9th Cir. 1996) (clerk immune from suit related to processing of supersedeas
26 bond). Plaintiff’s arguments about ministerial acts, (Dkt. No. 9 ¶¶ 46–48; Dkt. No. 10), do not
27 overcome the absolute quasi-judicial immunity afforded to acts that are closely associated with the
28 judicial function. *See Mishler v. Clift*, 191 F.3d 998, 1008 (9th Cir. 1999) (explaining that

1 plaintiff could challenge a ministerial act “not closely associated with the judicial process,” but
2 noting that “holding hearings, taking evidence, and adjudicating are functions that are inherently
3 judicial in nature”). Such immunity “discourages collateral attacks on final judgments through
4 civil suits, and thus promotes,” as in Plaintiff’s case, “the use of appellate procedures as the
5 standard system for correcting judicial error.” *Castillo*, 297 F.3d at 947.

6 Accordingly, Plaintiff’s claim against the Clerk is barred. *See* 28 U.S.C. § 1915(e)(2)
7 (mandating dismissal of any claim that “seeks monetary relief against a defendant who is immune
8 from such relief”).

9 **B. Second Cause of Action: Court Reporter**

10 The amended complaint alleges that, during trial, the judge “ordered the court reporter not
11 to make a record” of Plaintiff’s objections to prevent Plaintiff from preserving them for appeal.
12 (Dkt. No. 9 ¶ 40.) Recording objections “is a ministerial act for the Court Reporter,” with no
13 “discretion to not take down any critical objections.” (*Id.* ¶ 41.)

14 For the same reasons as the first claim, this claim is barred by absolute quasi-judicial
15 immunity. Recording court proceedings at the direction of a judge is an administrative act that is
16 part of the judicial function of holding hearings and resolving disputes. *See Wright*, 981 F.3d at
17 738; *Castillo*, 297 F.3d at 947. Accordingly, Plaintiff’s claim against the Court Reporter is barred.
18 *See* 28 U.S.C. § 1915(e)(2).

19 **C. Third Cause of Action: Probation Officer**

20 The amended complaint alleges that the Probation Officer deliberately put false
21 information in Plaintiff’s probation report “in an effort to have [him] sent to a community in
22 which he . . . has no connection[s] and that places his . . . life at risk.” (Dkt. No. 9 ¶ 59.) “[A]n
23 inmate who is released on parole” “may be returned” to a county or city other than that of his last
24 legal residence “if that would be in the best interests of the public.” Cal. Penal Code § 3003(a)-
25 (b). The amended complaint does not allege facts sufficient to support an inference that Plaintiff’s
26 placement in Red Bluff was contrary to the public interest or violative of a constitutional right.
27 Plaintiff states that Red Bluff “is populated with White Supremacists who move there to escape
28 Black people,” and that the Probation Officer’s goal was to “have him die or be killed.” (Dkt. No.

9 ¶ 88.) These conclusory statements hint at violations of constitutional rights, but are not sufficiently supported by the factual allegations in the amended complaint.

Additionally, probation officers have absolute immunity with respect to “the imposition of parole conditions.” *Thornton v. Brown*, 757 F.3d 834, 840 (9th Cir. 2013) (cleaned up). As noted in the Court’s first screening order, (Dkt. No. 7 at 6), the facts as pleaded do not compel a finding of immunity because it is not clear as a matter of law that the Probation Officer’s alleged conduct is an “imposition of parole conditions.”

CONCLUSION

For the reasons explained above, the amended complaint does not survive Section 1915 review. Plaintiff's claims against the Court Clerk and Court Reporter are barred by absolute quasi-judicial immunity. Plaintiff's claim against the Probation Officer requires additional factual allegations.

If Plaintiff believes he can cure the deficiencies, or at least some of the deficiencies, he may file a second amended complaint. In light of Plaintiff's notice of unavailability, (Dkt. No. 11), the second amended complaint is due on or before **March 28, 2022**. Plaintiff is warned that failure to file a second amended complaint may result in a report and recommendation that his complaint be dismissed.

The Court encourages Plaintiff to seek free assistance from the Northern District's Legal Help Center, 450 Golden Gate Avenue, 15th Floor, Room 2796, San Francisco, CA 94102. In light of the ongoing COVID-19 pandemic, Plaintiff should make a telephone appointment by calling (415) 782-8982. The website for the Northern District of California also has information for litigants who are not represented by counsel.

IT IS SO ORDERED.

Dated: February 9, 2022

Jacqueline Scott Corley
JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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WAYNE JOHNSON,

Case No. 21-cv-07579-JSC

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Plaintiff,

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v.

**SCREENING ORDER PURSUANT TO
28 U.S.C. § 1915**

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CONTRA COSTA COUNTY CLERK
RECORDER, et al.,

Re: Dkt. No. 1

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Defendants.

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Plaintiff Wayne Johnson, who is proceeding without an attorney, filed this civil rights action against the Contra Costa County Clerk-Recorder Deborah Cooper (“Court Clerk”), the Contra Costa County Court Reporter Patricia D. Malone (“Court Reporter”), the Contra Costa County Chief Probation Officer Esa Ehmen Krause (“Probation Officer”), and Does 1-10. The Court previously granted Plaintiff’s application to proceed *in forma pauperis*. (Dkt. No. 4.)¹ It must now review the complaint’s allegations under 28 U.S.C. § 1915.

13

COMPLAINT ALLEGATIONS

14

Plaintiff alleges various constitutional violations, including violations of the Fourth Amendment, Eighth Amendment, and Fourteenth Amendment, in relation to a restraining order and a criminal conviction resulting from a violation of that order. The restraining order was issued against Plaintiff sometime before December 3, 2018. (Dkt. No. 1 at 3 ¶ 15.) The Court Clerk processed the unlawfully procured restraining order despite her training regarding the issuance of orders. (*Id.* at 3 ¶ 19.) On December 3, 2018, a Contra Costa County judge issued a warrant for Plaintiff’s arrest “based upon knowingly false information” for “unlawful conduct while a

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¹ Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 restraining order was in effect.” (*Id.* at 3 ¶ 15.) Plaintiff was arrested and held for three days in
2 Alameda County jail before being released on bail. (*Id.* at 3 ¶ 21.) The arresting police officers did
3 not present an arrest warrant and “if defendants did obtain a warrant, they provided deliberately
4 false information, or reckless statements, to the magistrate or judge to obtain said warrant.” (*Id.* at
5 ¶¶ 28–29.) Plaintiff did not receive credit for the days spent in jail in Alameda County. (*Id.* at 3–
6 4 ¶ 22.) On March 4, 2019, Plaintiff appeared in court where the judge “revoked Plaintiff’s bail
7 and remanded him to custody.” (*Id.* at 4 ¶ 24.) Plaintiff was “held without bond for the entire trial
8 and prevented from locating crucial witnesses and evidence.” (*Id.* at 4 ¶ 25.) During the trial,
9 “Judge Burch ordered the court reporter to not make a record of [Plaintiff’s] objection” and the
10 Judge “continually engaged in that kind of behavior, obstructing justice and creating roadblocks to
11 a fair trial. He ‘ordered’ the court reporter not to record critical objections on numerous
12 occasions.” (*Id.* at 4 ¶ 27.) At the conclusion of the trial, Plaintiff was sentenced to an unknown
13 length of time in San Quentin State Penitentiary. (*Id.* at 4 ¶ 29.)

14 The California Court of Appeal voided the restraining order against Plaintiff on January 3,
15 2020. (*Id.* at 3 ¶ 18.) Plaintiff was released from prison on April 1, 2021. (*Id.* at 5 ¶ 25.) The
16 Probation Officer “falsely reported Plaintiff was transient[,] had no education[,]” and that
17 “Plaintiff had a substance abuse problem when there is absolutely no information Plaintiff had any
18 connection to any substance abuse.” (*Id.*) This “false information” caused the California
19 Department of Corrections and Rehabilitation (“CDCR”) to send Plaintiff to Red Bluff, California
20 for two weeks where he was homeless and without food or means of support. (*Id.*) Plaintiff’s
21 “underlying conviction in cases 01-188003 and 0051905-90 are currently on Appeal in People v.
22 Johnson A159389, and there is an accompanying Petition for Writ Of Habeas Corpus also pending
23 associated with that appeal.” (*Id.* at 3 ¶ 14.)

24 Plaintiff sues Defendants in both their official and personal capacities. (*Id.* at 2 ¶ 5.) He
25 alleges that Defendants “are responsible in some legal way for [Plaintiff’s] injuries and damages”
26 in violation of 42 U.S.C. §§ 1983 and 1988. (*Id.* at 2 ¶ 7.) Plaintiff asserts jurisdiction under 28
27 U.S.C. §§ 1331 and 1333 for his federal constitutional claims. (*Id.*) Finally, the requested relief
28 includes: compensatory and general damages in the amount of \$1,007,100; changes to Contra

1 Costa County's policies; punitive damages against all defendants in the amount of \$500,000;
2 attorney's fees; and trial by jury. (*Id.* at 8.)

3 **LEGAL STANDARD**

4 The Court has a continuing duty to dismiss any case in which a party is proceeding *in*
5 *forma pauperis* upon a determination that the case is: (1) frivolous or malicious, (2) fails to state a
6 claim on which relief may be granted, or (3) seeks monetary relief against a defendant who is
7 immune from such relief. *See* 28 U.S.C. § 1915(e)(2). The standard of review under 28 U.S.C.
8 §1915(e)(2) mirrors that of Rule 12(b)(6). *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir.
9 2000). Thus, the complaint must allege “enough facts to state a claim to relief that is plausible on
10 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A facial plausibility standard is
11 not a “probability requirement” but mandates “more than a sheer possibility that a defendant has
12 acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). To avoid dismissal, a
13 complaint must contain more than “naked assertion[s],” “labels and conclusions” or “a formulaic
14 recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555–57. “A claim has facial
15 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
16 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

17 A complaint must contain “a short and plain statement of the claim showing that the
18 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *see also Moss v. Infinity Ins. Co.*, No. 15-cv-
19 03456-JSC, 2015 WL 5360294, at *2 (N.D. Cal. Sept. 14, 2015). “While the federal rules require
20 brevity in pleading, a complaint nevertheless must be sufficient to give the defendants ‘fair notice’
21 of the claim and the ‘grounds upon which it rests.’” *Coleman v. Beard*, No. 14-CV-05508-YGR
22 (PR), 2015 WL 395662, at *4 (N.D. Cal. Jan. 29, 2015) (quoting *Erickson v. Pardus*, 551 U.S. 89,
23 93 (2007)). A complaint that fails to state a defendant’s specific acts “that violated the plaintiff’s
24 rights fails to meet the notice requirements of Rule 8(a).” *Medina Chiprez v. Becerra*, No. 20-CV-
25 00307-YGR (PR), 2020 WL 4284825, at *3 (N.D. Cal. July 27, 2020) (citing *Hutchinson v.*
26 *United States*, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982)).

27 Further, when a plaintiff files a complaint without representation by a lawyer, the Court
28 must “construe the pleadings liberally . . . to afford the petitioner the benefit of any doubt.” *Hebbe*

1 objections at trial is a *de facto* challenge to Plaintiff's conviction which has yet to be ruled on by
2 the state appellate court, *Heck* would bar this claim.

3 Moreover, regardless, drawing all reasonable inferences from the allegations in Plaintiff's
4 favor, the Court Reporter may be immune from suit. Quasi-judicial immunity "applies when a
5 non-judicial officer performs a non-discretionary or administrative function . . . at the explicit
6 direction of a judicial officer." *Wright v. Beck*, 981 F.3d 719, 738 (9th Cir. 2020) (cleaned up).
7 Here, according to Plaintiff's allegations, the judge "ordered" the Court Reporter to exclude
8 certain objections from the record. (Dkt. No. 1 at 4 ¶ 24.) This explicit direction by the judge
9 could be considered an extension of the judge's exercise of discretionary judgment. *See Wright*,
10 981 F.3d at 738.

11 **C. Third Cause of Action: Probation Officer**

12 Plaintiff's third cause of action is against the Probation Officer for the intentional inclusion
13 of false and misleading information in Plaintiff's file that caused Plaintiff to be released on parole
14 in Red Bluff, California where he remained for a period of two weeks. "[A]n inmate who is
15 released on parole . . . shall be returned to the county that was the last legal residence of the inmate
16 prior to the inmate's incarceration." Cal. Penal Code § 3003(a). Notwithstanding this rule, "an
17 inmate may be returned to another county or city if that would be in the best interests of the
18 public." *Id.* § 3003(b). Plaintiff's complaint fails to allege facts that support an inference that
19 placement in Red Bluff was contrary to the public interest or violative of a constitutional right.

20 Moreover, probation officers have immunity from certain claims. "[A]bsolute immunity
21 extends to parole officials for the imposition of parole conditions because that task is integrally
22 related to an official's decision to grant or revoke parole, which is a quasi-judicial function."
23 *Thornton v. Brown*, 757 F.3d 834, 839–40 (9th Cir. 2013) (cleaned up). Here, Plaintiff alleges that
24 the Probation Officer "falsely reported Plaintiff was transient[,] had no education[,] and that
25 Plaintiff had a substance abuse problem when there is absolutely no information Plaintiff had any
26 connection to any substance abuse." (Dkt. No. 1 at 5 ¶ 25.) It is unclear whether the Probation
27 Officer's conduct equates to the imposition of parole conditions. Thus, the facts as pleaded do not
28 compel a finding of immunity.

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CONCLUSION

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For the reasons explained above, the complaint as pleaded does not survive section 1915 review. If Plaintiff believes he can cure the deficiencies, he may file an amended complaint on or before **January 5, 2022**.

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IT IS SO ORDERED.

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Dated: December 9, 2021

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JACQUELINE SCOTT CORLEY
United States Magistrate Judge

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 25 2023

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

WAYNE JOHNSON, Esquire,

No. 22-16290

Plaintiff-Appellant,

D.C. No. 3:21-cv-07579-JSC
Northern District of California,
San Francisco

v.

CONTRA COSTA COUNTY CLERK
RECORDER; et al.,

ORDER

Defendants-Appellees.

Before: SCHROEDER, RAWLINSON, and BADE, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Johnson's petition for rehearing en banc (Docket Entry No. 21) is denied.

No further filings will be entertained in this closed case.

APP. 14