

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Foster v. Brown

No. 2:24-cv-2979 DC SCR P (E.D. Cal. May 2, 2025) · No. No. 2:24-cv-2979 DC SCR P · Decided May 5,
2025

OPINION

(PC) Foster v. Brown

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 MICHAEL BARKARRI FOSTER, No. 2:24-cv-2979 DC SCR P

12 Plaintiff,

13 v. ORDER AND FINDINGS AND

RECOMMENDATIONS

14 BROWN, et al., 15 Defendants. 16 17 Plaintiff, a state prisoner proceeding without counsel,
filed this civil rights action pursuant 18 to 42 U.S.C. §1983. Before the court are plaintiff's
complaint for screening as well as his 19 motions to proceed in forma pauperis. For the reasons set
forth below, the undersigned 20 recommends that the complaint be dismissed without leave to
amend. Based on this 21 recommendation, the court denies plaintiff's motions to proceed in forma
pauperis as moot.

22 SCREENING

23 I. Legal Standards 24 The court is required to screen complaints brought by prisoners seeking
relief against a 25 governmental entity or an officer or employee of a governmental entity. See 28
U.S.C. 26 §1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has
raised 27 claims that are legally "frivolous or malicious," that fail to state a claim upon which
relief may be 28 granted, or that seek monetary relief from a defendant who is immune from such
relief. See 28 1 U.S.C. §1915A(b)(1) & (2). 2 A claim is legally frivolous when it lacks an
arguable basis either in law or in fact. 3 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v.*
Murphy, 745 F.2d 1221, 1227-28 (9th

4 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
5 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
6 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully 7
pleaded, has an arguable legal and factual basis. See *Franklin*, 745 F.2d at 1227. Rule 8(a)(2) of 8
the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim 9

showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what 10 the . . . claim is and the grounds upon which it rests.’” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 11 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). 12 However, in order to survive dismissal for failure to state a claim a complaint must 13 contain more than “a formulaic recitation of the elements of a cause of action;” it must contain 14 factual allegations sufficient “to raise a right to relief above the speculative level.” *Bell Atlantic*, 15 550 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the 16 allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hospital Trustees*, 425 U.S. 17 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all 18 doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). 19 II. Discussion 20 Plaintiff is incarcerated at the Salinas Valley State Prison. His complaint names four 21 defendants: three Judges of the Sacramento County Superior Court and a Sacramento County 22 Public Defender. Plaintiff alleges defendants failed to adequately represent him in criminal 23 proceedings in 2023 because they undermined his search for evidence. 24 Plaintiff’s complaint cannot survive screening because he has named defendants who are 25 either immune from suit or who are not subject to civil liability because they do not qualify as 26 state actors. The Supreme Court has held that judges acting within the course and scope of their 27 judicial duties are absolutely immune from liability for damages under § 1983. *Pierson v. Ray*, 28 386 U.S. 547 (1967). A judge is “subject to liability only when he has acted in the ‘clear absence 1 of all jurisdiction.’” *Stump v. Sparkman*, 435 U.S. 349, 356-7 (1978), quoting *Bradley v. Fisher*, 2 13 Wall. 335, 351 (1872). A judge’s jurisdiction is quite broad. The two-part test of *Stump v. 3 Sparkman* determines its scope: 4 The relevant cases demonstrates that the factors determining whether an act by a judge is a ‘judicial’ one relate to the nature of the act 5 itself, i.e., whether it is a function normally performed by a judge and to the expectation of the parties, i.e., whether they dealt with the 6 judge in his judicial capacity.

7 *Id.* at 361. The allegations in the complaint indicate that the defendant judges were acting within 8 the scope of their judicial duties. Therefore, they are immune from civil liability. 9 Additionally, plaintiff’s Public Defender is not a state actor within the meaning of §1983. 10 See *Polk County v. Dodson*, 454 U.S. 312, 318-19 (1981) (public defenders do not act under 11 color of state law for purposes of §1983 when performing a lawyer’s traditional functions); *Rivera 12 v. Cty. of Los Angeles*, 745 F.3d 384, 391 n.3 (9th Cir. 2014). Therefore, the complaint does not 13 state a claim for relief against any proper defendant. The undersigned recommends dismissing 14 plaintiff’s complaint. See 28 U.S.C. § 1915A(b). Because permitting plaintiff to amend the 15 complaint would be futile, this court further recommends that the complaint be dismissed without 16 leave to amend. See *Klamath-Lake Pharm. Ass’n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 17 1293 (9th Cir. 1983) (holding that while leave to amend shall be freely given, the court does not 18 have to allow futile amendments). 19 For the foregoing reasons, IT IS HEREBY ORDERED that plaintiff’s motions for leave to 20 proceed in forma pauperis (ECF No. 2, 7) are denied as moot.

21 IT IS FURTHER RECOMMENDED that plaintiff's complaint be dismissed without leave 22
to amend. 23 These findings and recommendations are submitted to the United States District
Judge 24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
one days 25 after being served with these findings and recommendations, any party may file
written 26 objections with the court and serve a copy on all parties. Such a document should be
captioned 27 "Objections to Magistrate Judge's Findings and Recommendations." Any response to
the 28 objections shall be filed and served within fourteen days after service of the objections. The
1 || parties are advised that failure to file objections within the specified time may waive the right
to 2 || appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 3 ||

DATED: May 2, 2025 4

6 SEAN C. RIORDAN

4 UNITED STATES MAGISTRATE JUDGE

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