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

JAMES P. RAY,

Plaintiff,
vs.

No. CIV S-09-1102 JAM EFB P

VINCENT R. MAHER,

Defendant.

ORDER AND
FINDINGS AND RECOMMENDATIONS

James P. Ray, an inmate confined at Deuel Vocational Institution, filed this pro se civil rights action under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). For the reasons set forth below, the court finds that plaintiff's amended complaint fails to state any claims for which relief can be granted under § 1983, and recommends that it be dismissed without leave to amend.

I. Request to Proceed In Forma Pauperis

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Dckt. No. 2. Plaintiff's application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.

1 § 1915(b)(1) and (2).

2 **II. Screening Order**

3 Pursuant to 28 U.S.C. § 1915A, the court shall review “a complaint in a civil action in
4 which a prisoner seeks redress from a governmental entity or officer or employee of a
5 governmental entity.” 28 U.S.C. § 1915A(a). “On review, the court shall identify cognizable
6 claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous,
7 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
8 from a defendant who is immune from such relief.” *Id.* § 1915A(b).

9 A district court must construe a pro se pleading “liberally” to determine if it states a
10 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an
11 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While
12 detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of
13 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.
14 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
15 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
16 plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

17 A claim has facial plausibility when the plaintiff pleads factual content that allows
18 the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged. The plausibility standard is not akin to a “probability
20 requirement,” but it asks for more than a sheer possibility that a defendant has
acted unlawfully. Where a complaint pleads facts that are merely consistent with a
defendant’s liability, it stops short of the line between possibility and plausibility
of entitlement to relief.

21 *Id.* (citations and quotation marks omitted). Although legal conclusions can provide the
22 framework of a complaint, they must be supported by factual allegations, and are not entitled to
23 the assumption of truth. *Id.* at 1950.

24 The Civil Rights Act under which this action was filed provides:

25 Every person who, under color of [state law] . . . subjects, or causes to be
26 subjected, any citizen of the United States . . . to the deprivation of any rights,
privileges, or immunities secured by the Constitution . . . shall be liable to the

1 party injured in an action at law, suit in equity, or other proper proceeding for
2 redress

3 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
4 establish the defendant's personal involvement in the constitutional deprivation or a causal
5 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.
6 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
7 (9th Cir. 1978).

8 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and finds it
9 does not state a cognizable claim. Plaintiff seeks damages from his trial counsel, stating:

10 Vincent Maher has throughout his representation in my criminal
11 case, taken on the role of a surrogate-prosecutor against my best
12 interest. He has refused to perform investigations critical and
13 necessary to my defense. Due to the lack of adequate
14 representation by Vincent Maher, my case has been prejudiced
15

16 I would like the courts to sanction Vincent Maher as well as
17 compensate me for the mental anguish that I suffered as a result of
18 Vincent Maher's fraudulent misrepresentation. I would like to be
19 compensated in the amount of \$100,000,000 . . . as well as
20 \$100,000 . . . for punitive damages.

21 Dckt. No. 1 at 5.

22 It appears that, despite his demand for money damages, plaintiff's claim goes to the
23 validity of his conviction or sentence. The Supreme Court has held that "a state prisoner's
24 § 1983 action is barred (absent prior invalidation)--no matter the relief sought (damages or
25 equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction or
26 internal prison proceedings)--if success in that action would necessarily demonstrate the
27 invalidity of confinement or its duration." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005)
(emphasis added); *see also Edwards v. Balisok*, 520 U.S. 641 (1997); *Heck v. Humphrey*, 512
U.S. 477 (1994). Were plaintiff to succeed on his claims that his defense attorney provided
ineffective assistance and he was prejudiced as a result, those findings would necessarily

1 implicate the constitutionality of plaintiff's current imprisonment. *See Heck*, 512 U.S. at 487.
2 Plaintiff has not demonstrated that his sentence has previously been invalidated. His claims
3 challenging the validity of his conviction or sentence should therefore be dismissed without
4 leave to amend. Plaintiff may wish to file a habeas corpus petition challenging the validity of his
5 conviction due to the allegedly ineffective assistance of his trial counsel.

6 Accordingly, the court hereby ORDERS that:

7 1. Plaintiff's request to proceed in forma pauperis is granted.

8 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
9 accordance with the notice to the Director of the California Department of Corrections and
10 Rehabilitation filed concurrently herewith.

11 Further, it is hereby RECOMMENDED that plaintiff's complaint be dismissed without
12 leave to amend and the Clerk be directed to CLOSE the case.

13 These findings and recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court and serve a copy on all parties. Such a document should be captioned
17 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections
18 within the specified time may waive the right to appeal the District Court's order. *Turner v.*
19 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

20 Dated: March 24, 2011.

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22 EDMUND F. BRENNAN
23 UNITED STATES MAGISTRATE JUDGE
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