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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RAYMOND THOMAS GARCIA, JR.,
Plaintiff,
v.
JEFFERY BEARD, et al.,
Defendants.

CASE NO. 1:14-cv-00057-LJO-MJS (PC)
FINDINGS AND RECOMMENDATION TO:
1) DISMISS ACTION WITH PREJUDICE
FOR FAILURE TO STATE A CLAIM
(ECF NO. 24)
2) DENY AS MOOT PLAINTIFF'S MOTION
FOR EXTENSION OF TIME
(ECF NO. 25)
3) GRANT PLAINTIFF'S MOTION FOR
COPIES
(ECF NO. 26)
FOURTEEN (14) DAY OBJECTION
DEADLINE

I. PROCEDURAL HISTORY

Plaintiff Raymond Thomas Garcia, Jr. is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. (ECF Nos. 4 & 10.)

1 On January 15, 2014, Plaintiff filed his complaint. (ECF No. 1.) Then on
2 February 27, 2014, he filed a Second Amended Complaint (ECF No. 10.) without the
3 Court having screened his original Complaint and without any First Amended Complaint
4 having been filed. On March 18, 2015, the Court screened Plaintiff's Second Amended
5 Complaint and dismissed it for failure to state a claim, but granted Plaintiff leave to
6 amend. (ECF No. 23.) Plaintiff filed his Third Amended Complaint on March 30, 2015,
7 and it is now before the Court for screening. (ECF No. 24.)

8 Plaintiff also filed a motion for extension of time (ECF No. 25.) and a motion for
9 copies. (ECF No. 26.) The Court will address these motions below.

10 **II. SCREENING REQUIREMENT**

11 The Court is required to screen complaints brought by prisoners seeking relief
12 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
13 § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has
14 raised claims that are legally "frivolous, malicious," or that fail "to state a claim upon
15 which relief may be granted," or that "seek monetary relief from a defendant who is
16 immune from such relief." 28 U.S.C. § 1915A(b)(1), (2). "Notwithstanding any filing fee,
17 or any portion thereof, that may have been paid, the court shall dismiss the case at any
18 time if the court determines that . . . the action or appeal . . . fails to state a claim on
19 which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

20 **III. SUMMARY OF COMPLAINT**

21 Plaintiff identifies Secretary of California Department of Corrections and
22 Rehabilitation ("CDCR") Jeffrey Beard, Sacramento CDCR Records employee John or
23 Jane Doe I, Counselor Jane Doe, and other governmental entities or employees as
24 defendants.

25 It is difficult to decipher Plaintiff's Third Amended Complaint and the allegations in
26 it, but it appears to allege that Plaintiff has been falsely imprisoned and negligently
27 incarcerated beyond the term of his sentence.

1 **IV. ANALYSIS**

2 **A. Section 1983**

3 Section 1983 “provides a cause of action for the ‘deprivation of any rights,
4 privileges, or immunities secured by the Constitution and laws’ of the United States.”
5 *Wilder v. Virginia Hosp. Ass’n*, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
6 Section 1983 “‘is not itself a source of substantive rights,’ but merely provides ‘a method
7 for vindicating federal rights conferred elsewhere.’” *Graham v. Connor*, 490 U.S. 386,
8 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979)).

9 To state a claim under Section 1983, a plaintiff must allege two essential
10 elements: (1) that a right secured by the Constitution and laws of the United States was
11 violated and (2) that the alleged violation was committed by a person acting under the
12 color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988); see also *Ketchum v.*
13 *Cnty. of Alameda*, 811 F.2d 1243, 1245 (9th Cir. 1987).

14 A complaint must contain “a short and plain statement of the claim showing that
15 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
16 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
17 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S.
18 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
19 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
20 plausible on its face.’” *Id.* Facial plausibility demands more than the mere possibility
21 that a defendant committed misconduct and, while factual allegations are accepted as
22 true, legal conclusions are not. *Id.*

23 **B. Complaint Format**

24 A complaint must contain “a short and plain statement of the claim showing that
25 [Plaintiff] is entitled to relief” Fed. R. Civ. P. 8(a)(2). “Each allegation must be
26 **simple, concise, and direct.**” Fed. R. Civ. P. 8(d)(1) (emphasis added).

1 Plaintiff's Third Amended Complaint does not contain complete sentences or
2 thoughts, the words run together, and it is single-spaced. The Court will address the
3 claims that Plaintiff appears to be alleging.

4 **C. Linkage**

5 Under Section 1983, Plaintiff must demonstrate that each Defendant personally
6 participated in the deprivation of his rights. See *Jones v. Williams*, 297 F.3d 930, 934
7 (9th Cir. 2002). In other words, there must be an actual connection or link between the
8 actions of the Defendants and the deprivation alleged to have been suffered by Plaintiff.
9 See *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691, 695 (1978).

10 Plaintiff names other governmental entities or employees of CDCR as
11 Defendants, but fails to separate these Defendants individually or link any of them to a
12 violation of his constitutional rights. Plaintiff did not name any of these Defendants in his
13 original Complaint and fails to plead any facts related to them in his Third Amended
14 Complaint. Plaintiff also does not appear to link any of the named Defendants to a
15 specific violation of his constitutional rights.

16 **D. State Tort Violations**

17 Plaintiff appears to allege state law claims of negligence, false imprisonment, and
18 intentional infliction of emotional distress.

19 The Court's prior screening order granted Plaintiff leave to amend his state law
20 claims to demonstrate necessary compliance with the California Tort Claims Act. (ECF
21 No. 23.) Plaintiff's failure to do so is reasonably construed as an inability to do so.

22 **E. Heck Bar**

23 Often referred to as the *Heck* bar, the favorable termination rule bars any civil
24 rights claim which, if successful, would demonstrate the invalidity of confinement or its
25 duration. Such claims may be asserted only in a *habeas corpus* petition. *Heck v.*
26 *Humphrey*, 512 U.S. 477, 489 (1994) (until and unless favorable termination of the
27 conviction or sentence occurs, no cause of action under § 1983 exists); see also
28

1 *Edwards v. Balisok*, 520 U.S. 641, 646-48 (1997) (holding that a claim for monetary and
2 declaratory relief challenging the validity of procedures used to deprive a prisoner of
3 good-time credits is not cognizable under § 1983).

4 Plaintiff was advised in the Court's prior screening order that if he wishes to
5 dispute the propriety of his incarceration, calculation of good time credits, or his eligible
6 parole date, he must pursue said claims in a *habeas corpus* petition. Instead of
7 complying with the Court's prior order, Plaintiff appears to dispute that his claims are
8 barred by *Heck*. Plaintiff has neither filed a motion for reconsideration nor pled any new
9 facts or circumstances that would warrant reconsideration of the Court's prior order.
10 *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir.
11 2009) ("A motion for reconsideration should not be granted, absent highly unusual
12 circumstances, unless the . . . court is presented with newly discovered evidence,
13 committed clear error, or if there is an intervening change in the controlling law.")
14 Therefore, it is recommended that Plaintiff's Third Amended Complaint be dismissed
15 with prejudice for failure to state a cognizable claim for relief.

16 **V. MOTION FOR EXTENSION OF TIME**

17 Plaintiff filed notice of his lack of access to the law library and to a typewriter and
18 sought leave to file his Third Amended Complaint in pencil and/or have the Clerk's Office
19 photocopy it. In light of Plaintiff's Third Amended Complaint being timely received and
20 filed, his motion is DENIED as moot.

21 **VI. MOTION FOR COPIES**

22 Plaintiff provides a summary of his Third Amended Complaint and also appears to
23 be seeking a copy of his Third Amended Complaint. The Clerk's Office is directed to
24 send Plaintiff a copy of his Third Amended Complaint with service of this order to allow
25 Plaintiff to file any objections to the undersigned's Findings and Recommendations.
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1 **VII. CONCLUSION AND RECOMMENDATIONS**

2 Plaintiff's Third Amended Complaint fails to state a cognizable claim. He
3 previously was advised of pleading deficiencies and afforded the opportunity to correct
4 them. He failed to do so. Any further leave to amend reasonably appears futile and
5 should be DENIED. Plaintiff's motion for an extension of time is DENIED as moot.
6 Plaintiff's motion for a copy of his Third Amended Complaint is GRANTED. The Clerk
7 should send Plaintiff a copy of his Third Amended Complaint (ECF No. 24.) with this
8 order.

9 The undersigned recommends that the action be dismissed with prejudice, that
10 dismissal count as a strike pursuant to 28 U.S.C. § 1915(g), and that the Clerk of the
11 Court terminate any and all pending motions and close the case.

12 These findings and recommendations will be submitted to the United States
13 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §
14 636(b)(1). Within **fourteen** (14) days after being served with the findings and
15 recommendations, the parties may file written objections with the Court. The document
16 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."
17 A party may respond to another party's objections by filing a response within fourteen
18 (14) days after being served with a copy of that party's objections. The parties are
19 advised that failure to file objections within the specified time may result in the waiver of
20 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (*citing Baxter*
21 *v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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23 IT IS SO ORDERED.

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25 Dated: April 17, 2015

/s/ Michael J. Seng
26 UNITED STATES MAGISTRATE JUDGE

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