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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY ELL SHEHEE,

Plaintiff,

v.

ISABLE S. ORTEGA, et al.,

Defendants.

CASE NO. 1:14-cv-00623-AWI-MJS

ORDER RECOMMENDING DISMISSAL
WITHOUT PREJUDICE

(ECF NO. 8)

PLAINTIFF’S OBJECTIONS, IF ANY, DUE
WITHIN THIRTY (30) DAYS

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff Gregory Ell Shehee, a civil detainee proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on April 28, 2014. (ECF No. 1.) On May 30, 2014, Plaintiff’s Complaint was screened and dismissed, with leave to amend, for failure to state a cognizable claim. (ECF No. 7.) Plaintiff’s First Amended Complaint (ECF No. 8) is now before the Court for screening.

II. SCREENING REQUIREMENT

Pursuant to 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the Complaint for sufficiency to state a claim. The Court must dismiss a complaint or portion thereof if it determines that the action has raised claims that are legally “frivolous or malicious,” “fails 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. § 1915(e)(2)(B). “Notwithstanding any filing fee, or any portion thereof, that may have

1 been paid, the court shall dismiss the case at any time if the court determines that . . .
2 the action or appeal . . . fails to state a claim on which relief may be granted.” 28 U.S.C.
3 § 1915(e)(2)(B)(ii).

4 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

5 The First Amended Complaint identifies Isable S. Ortega, a Case Records Analyst
6 at Coalinga State Hospital, and Barbara Morris, Health Care Information, as Defendants.
7 Plaintiff’s allegations are fragmented and difficult to understand. As far as the Court can
8 decipher, Plaintiff claims that the Defendants failed to properly respond to discovery
9 requests during his criminal trial and thereby denied him a fair trial in violation of his
10 federal rights. (Compl. at 3.)

11 **IV. ANALYSIS**

12 **A. Pleading Requirement**

13 Section 1983 “provides a cause of action for the ‘deprivation of any rights,
14 privileges, or immunities secured by the Constitution and laws’ of the United States.”
15 Wilder v. Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
16 Section 1983 is not itself a source of substantive rights, but merely provides a method for
17 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
18 (1989).

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

24 A complaint must contain “a short and plain statement of the claim showing that
25 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
26 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
27 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct.
28 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

1 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
2 plausible on its face.’” Id. Facial plausibility demands more than the mere possibility
3 that a defendant committed misconduct and, while factual allegations are accepted as
4 true, legal conclusions are not. Id. at 1949-50.

5 **B. Heck Bar**

6 When a prisoner challenges the legality or duration of his custody, or raises a
7 constitutional challenge which could entitle him to an earlier release, his sole federal
8 remedy is a writ of habeas corpus. Wilkinson v. Dotson, 544 U.S. 74, 78 (2005); Preiser
9 v. Rodriguez, 411 U.S. 475, 477 (1973); Young v. Kenny, 907 F.2d 874, 876 (9th Cir.
10 1990). Moreover, when seeking relief for an allegedly unconstitutional conviction or
11 imprisonment, “a § 1983 plaintiff must prove that the conviction or sentence has been
12 reversed on direct appeal, expunged by executive order, declared invalid by a state
13 tribunal authorized to make such determination, or called into question by a federal
14 court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254.” Heck v. Humphrey, 512
15 U.S. 477, 486–87 (1994). “A claim . . . bearing that relationship to a conviction or
16 sentence that has not been so invalidated is not cognizable under § 1983.” Id. at 487.

17 Heck makes clear that a § 1983 cause of action “attributable to an
18 unconstitutional conviction or sentence does not accrue until the conviction or sentence
19 has been invalidated.” Id. at 489–90. “[A] state prisoner's § 1983 action is barred
20 (absent prior invalidation) - no matter the relief sought (damages or equitable relief), no
21 matter the target of the prisoner's suit (state conduct leading to conviction or internal
22 prison proceedings) - if success in that action would necessarily demonstrate the
23 invalidity of confinement or its duration.” Wilkinson, 544 U.S. at 81–82.

24 In this case Plaintiff complains that the Defendants denied him a fair criminal trial
25 by failing to respond to certain discovery requests. The amended complaint challenges
26 the validity of Plaintiff's underlying conviction. Here, success on Plaintiff's claim would
27 necessarily imply the invalidity of his conviction and continued incarceration.

28 Plaintiff cannot attack his conviction in a civil rights action. The decision must

1 have been successfully attacked before the civil rights action is filed. Heck, 512 U.S. at
2 489-90. Plaintiff's claim is not cognizable until and unless Plaintiff can show that the
3 criminal conviction has been set aside by the grant of writ of habeas corpus. Id. at 487.
4 The deficiencies identified herein cannot be cured, and therefore further leave to amend
5 this particular claim would be futile. See Guerrero v. Gates, 442 F.3d 697, 703 (9th Cir.
6 2006) (Heck barred plaintiff's claims of wrongful arrest, malicious prosecution, and
7 conspiracy among police officers to bring false charges against him); see also Valdez v.
8 Rosenbaum, 302 F.3d 1039, 1049 (9th Cir. 2002) (prisoner's Sixth Amendment claim of
9 denial of access to counsel while a pretrial detainee barred by Heck because claim
10 would necessarily imply invalidity of subsequent conviction).

11 **V. CONCLUSION AND RECOMMENDATION**

12 Plaintiff's First Amended Complaint does not state a cognizable claim against the
13 named Defendants. Accordingly, it is HEREBY RECOMMENDED that this action be
14 dismissed without¹ prejudice for failure to state a claim.

15 These Findings and Recommendations will be submitted to the United States
16 District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. §
17 636(b)(1). Within thirty (30) days after being served with these Findings and
18 Recommendations, Plaintiff may file written objections with the Court. The document
19 should be captioned "Objections to Magistrate Judge's Findings and Recommendations."
20 Plaintiff is advised that failure to file objections within the specified time may waive the
21 right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

22
23 IT IS SO ORDERED.

24 Dated: June 27, 2014

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

26
27 _____
28 ¹ Heck barred civil rights claim must be dismissed without prejudice so Plaintiff may reassert the claims if
the conviction or sentence is later invalidated. Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir.
1995).