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

RICKEY TRENT SMITH,  
  
                    Plaintiff,  
  
          v.  
  
DISTRICT ATTORNEY, et al.,  
  
                    Defendants.

Case No. 1:15-cv-00759-LJO-DLB PC  
  
FINDINGS AND RECOMMENDATIONS  
REGARDING DISMISSAL OF ACTION  
  
THIRTY-DAY OBJECTION DEADLINE

Plaintiff Rickey Trent Smith (“Plaintiff”) is a California state prisoner proceeding pro se in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on April 20, 2015, and it was transferred to this Court on May 14, 2015.

**I.     SCREENING STANDARD**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail 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. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or

1 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.

2 § 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the pleader  
4 is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
6 do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly,  
7 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to  
8 ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 555). While factual  
9 allegations are accepted as true, legal conclusions are not. Id.

10 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other  
11 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092  
12 (9th Cir. 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.  
13 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or  
14 omissions of each named defendant to a violation of his rights; there is no respondeat superior  
15 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d  
16 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);  
17 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim  
18 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).  
19 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.  
20 at 678; Moss, 572 F.3d at 969.

21 **II. ALLEGATIONS IN COMPLAINT**

22 Plaintiff challenges a September 19, 2014, sentence imposed in the Merced County Superior  
23 Court. Plaintiff argues that his sentence (1) constitutes double jeopardy; and (2) is incorrect under  
24 applicable laws. He requests monetary damages as relief.

25 **III. DISCUSSION**

26 Often referred to as the Heck bar, the favorable termination rule bars any civil rights claim  
27 which, if successful, would demonstrate the invalidity of confinement or its duration. Such claims  
28 may be asserted only in a habeas corpus petition. Heck v. Humphrey, 512 U.S. 477, 489, 114 S.Ct.

1 2364, 129 L.Ed.2d 383 (1994) (until and unless favorable termination of the conviction or sentence  
2 occurs, no cause of action under § 1983 exists); see also Edwards v. Balisok, 520 U.S. 641, 646–48,  
3 117 S.Ct. 1584, 137 L.Ed.2d 906 (1997) (holding that a claim for monetary and declaratory relief  
4 challenging the validity of procedures used to deprive a prisoner of good-time credits is not  
5 cognizable under § 1983).

6 Here, Plaintiff’s claim involves the validity of his sentence. Such a claim is barred by Heck,  
7 and he must pursue such claims by filing a habeas corpus petition. See Ramirez v. Galaza, 334 F.3d  
8 850, 856 (9th Cir.2003) (the application of Heck “turns solely on whether a successful § 1983 action  
9 would necessarily render invalid a conviction, sentence, or administrative sanction that affected the  
10 length of the prisoner’s confinement”).

11 Plaintiff’s complaint therefore fails to state a claim under section 1983 and should be  
12 dismissed.

13 **IV. FINDINGS AND RECOMMENDATIONS**

14 Accordingly, the Court RECOMMENDS that this action be dismissed for failure to state a  
15 claim under section 1983. The Court also RECOMMENDS that the Clerk of Court send Plaintiff a  
16 petition for writ of habeas corpus. He may file his habeas petition in a new, separate action.

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

24 IT IS SO ORDERED.

25  
26 Dated: May 28, 2015

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE