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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID TOWNSEL,

Plaintiff,

v.

MADERA COUNTY DEPT. PROBATION,
et al.,

Defendants.

Case No. 1:15-cv-00763-LJO-SAB

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING CERTAIN
CLAIMS

(ECF No. 1)

OBJECTIONS DUE WITHIN THIRTY
DAYS

Plaintiff David Townsel (“Plaintiff”), proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 19, 2015. (ECF No. 1.)

I.

SCREENING REQUIREMENT

Pursuant to 28 U.S.C. § 1915(e)(2), the Court must dismiss a case if at any time the Court determines that the complaint fails to state a claim upon which relief may be granted. In determining whether a complaint fails to state a claim, the Court uses the same pleading standard used under Federal Rule of Civil Procedure 8(a). A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.

1 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim
3 to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at
4 570). “[A] complaint [that] pleads facts that are ‘merely consistent with’ a defendant’s liability .
5 . . . ‘stops short of the line between possibility and plausibility of entitlement to relief.’” Iqbal,
6 556 U.S. at 678 (quoting Twombly, 550 U.S. at 557). Further, although a court must accept as
7 true all factual allegations contained in a complaint, a court need not accept a plaintiff’s legal
8 conclusions as true. Iqbal, 556 U.S. at 678.

9 II.

10 DISCUSSION

11 Plaintiff alleges that he was paroled in 2012 and was placed on post-release supervision
12 with the Madera County of Probation on October 22, 2012. Plaintiff post-release supervision is
13 set to expire on October 22, 2015. Plaintiff is seeking damages for his 27 months of post-release
14 supervision alleging it violates the Eighth Amendment and double jeopardy.

15 A. Eighth Amendment

16 The Eighth Amendment protects prisoners from inhumane methods of punishment and
17 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.
18 2006). To constitute cruel and unusual punishment in violation of the Eighth Amendment,
19 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman,
20 452 U.S. 337, 347 (1981). Plaintiff’s bare allegation that he has been subjected to 27 months of
21 post-release supervision does not state a claim under the Eighth Amendment.

22 B. Double Jeopardy

23 Similarly, Plaintiff’s allegation that he was exposed to double jeopardy is insufficient to
24 state a claim. The Double Jeopardy Clause precludes “a second prosecution for the same
25 offense,” and prevents “the State from ‘punishing twice, or attempting a second time to punish
26 criminally, for the same offense.’” Kansas v. Hendricks, 521 U.S. 346, 369 (1997) (quoting
27 Witte v. United States, 515 U.S. 389, 396 (1995)). Plaintiff does not include any factual
28 allegations that he has been punished more than once for the same offense by being placed on

1 post-release supervision.

2 **C. Habeas Corpus**

3 Finally, when a prisoner is challenging the legality or duration of her custody and the
4 relief he seeks is immediate or speedier release, his sole federal remedy is habeas corpus. Preiser
5 v. Rodriguez, 411 U.S. 475, 500, 93 S. Ct. 1827, 1841 (1973). A “prisoner’s § 1983 action is
6 barred (absent prior invalidation)-no matter the relief sought (damages or equitable relief), no
7 matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison
8 proceedings)-if success in that action would necessarily demonstrate the invalidity of
9 confinement or its duration.” Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005). A challenge to
10 the fact that a parolee is on supervised release must be raised on a habeas petition. Thornton v.
11 Brown, 757 F.3d 834, 838 (9th Cir. 2013).

12 To the extent that Plaintiff is challenging the fact that he was placed on and continues to
13 be on supervisor release his claim must be raised in habeas. Since the success in this action
14 would necessarily demonstrate the invalidity of Plaintiff’s sentence or its duration, the sole
15 remedy available to Plaintiff is a writ of habeas corpus. This claim should be dismissed without
16 leave to amend.

17 **D. Leave to Amend**

18 Under Rule 15(a) of the Federal Rules of Civil Procedure, a party may amend the party’s
19 pleading once as a matter of course at any time before a responsive pleading is served.
20 Otherwise, a party may amend only by leave of the court or by written consent of the adverse
21 party, and leave shall be freely given when justice so requires. Fed. R. Civ. P. 15(a). Rule 15(a)
22 is very liberal and leave to amend ‘shall be freely given when justice so requires.’” Amerisource
23 Bergen Corp. v. Dialysis West, Inc., 465 F.3d 946, 951 (9th Cir. 2006) (quoting Fed. R. Civ. P.
24 15(a)). The Court recommends that Plaintiff be granted leave to file an amended complaint.
25 Plaintiff is advised that he is not being granted the opportunity to amend his complaint at this
26 time. When the district court issues an order addressing these findings and recommendations,
27 Plaintiff will be provided by a deadline by which to file an amended complaint.

28 Further, Plaintiff is advised that Section 1983 provides a cause of action for the violation

1 of a plaintiff's constitutional or other federal rights by persons acting under color of state law.
2 Nurre v. Whitehead, 580 F.3d 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442
3 F.3d 1178, 1185 (9th Cir. 2006); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).
4 However, government officials may not be held liable for the actions of their subordinates under
5 a theory of vicarious liability for section 1983 actions, so to state a claim, the plaintiff must
6 demonstrate that each defendant personally participated in the deprivation of his rights. Iqbal,
7 556 U.S. at 677; Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010);
8 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297 F.3d at 934. This
9 requires the plaintiff to plead that the official has violated the Constitution through his own
10 individual actions and acted with the requisite state of mind to violate the underlying
11 constitutional provision. OSU Student Alliance v. Ray, 699 F.3d 1053, 1069-70 (9th Cir. 2012).
12 In other words to state a claim, Plaintiff must include factual allegations to show what each
13 individually named defendant did to violate his federal rights.

14 III.

15 CONCLUSION AND RECOMMENDATION

16 Based on the foregoing, IT IS HEREBY RECOMMENDED that:

- 17 1. Plaintiff's complaint be dismissed for failure to state a claim; and
- 18 2. Plaintiff's claim that he has been sentenced to a period of post release supervision
19 be dismissed without leave to amend; and
- 20 3. Plaintiff be granted leave to file an amended complaint to cure the deficiencies in
21 his Eighth Amendment and double jeopardy claims.

22 These findings and recommendations are submitted to the district judge assigned to this
23 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within thirty (30)
24 days of service of this recommendation, Plaintiff may file written objections to these findings
25 and recommendations with the Court. Such a document should be captioned "Objections to
26 Magistrate Judge's Findings and Recommendations." The district judge will review the
27 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).
28 Plaintiff is advised that failure to file objections within the specified time may result in the

1 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
2 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

5 Dated: May 27, 2015


UNITED STATES MAGISTRATE JUDGE

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