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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 JON ISAAC PALOMINO,

12 Plaintiff,

13 vs.

14 FRESNO COUNTY SUPERIOR
15 COURTHOUSE, et al.,

16 Defendants.
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1:16-cv-00316-GSA-PC

ORDER DISMISSING THIS CASE FOR
FAILURE TO STATE A CLAIM UNDER
SECTION 1983, WITHOUT PREJUDICE
TO FILING A HABEAS CORPUS
PETITION

ORDER FOR CLERK TO CLOSE CASE

20 **I. BACKGROUND**

21 Jon Isaac Palomino (“Plaintiff”) is a state prisoner proceeding pro se with this action.
22 On March 4, 2016, Plaintiff filed the complaint commencing this action pursuant to 42 U.S.C. §
23 1983. (ECF No. 1.) On April 14, 2016, Plaintiff consented to Magistrate Judge jurisdiction in
24 this action pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance.
25 (ECF No. 5.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern
26 District of California, the undersigned shall conduct any and all proceedings in the case until
27 such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

28 Plaintiff’s complaint is now before the Court for screening.

1 **II. SCREENING REQUIREMENT**

2 The Court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
4 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
5 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
6 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
7 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
8 paid, the court shall dismiss the case at any time if the court determines that the action or
9 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

10 A complaint is required to contain “a short and plain statement of the claim showing
11 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
12 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
13 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
14 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are
15 taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v. Wal-Mart
16 Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).
17 To state a viable claim, Plaintiff must set forth “sufficient factual matter, accepted as true, to
18 ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v. U.S.
19 Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). While factual allegations are accepted as
20 true, legal conclusions are not. Id. The mere possibility of misconduct falls short of meeting
21 this plausibility standard. Id.

22 **III. SUMMARY OF COMPLAINT**

23 Plaintiff is presently incarcerated at the California Medical Facility in Vacaville
24 California, in the custody of the California Department of Corrections and Rehabilitation
25 (CDCR). At the time Plaintiff filed this complaint, he was incarcerated at Wasco State Prison
26 (WSP) in Wasco, California. Plaintiff names as defendants the Fresno County Superior
27 Courthouse, Fresno County Jail, and Wasco State Prison. Plaintiff’s allegations follow, in their
28 entirety.

1 “Basically I got sentenced in 2012 or 2013 for violation of P.C.
2 273 in Visaila (*sic*) County, got sentenced to a year county time
3 plus fines which I was paying. I did that time. I was paying then
4 or now rather, on November 17, 2015, got resentenced to another
5 year and 90 days for same exact crime same exact case. I was
6 sent here to state prison!! I’ve sat here to rot since . . . Isn’t that
7 called double jeopardy?? Minus Alex Trebek! Isn’t this false
8 imprisonment?”

9 (Complaint, ECF No. 1 at 3.)

10 Plaintiff requests \$200.00 and “to be free today with no probation or parole.” (ECF No.
11 1 at 3.)

12 **IV. PLAINTIFF’S HABEAS CLAIMS**

13 When a prisoner challenges the legality or duration of his custody, or raises a
14 constitutional challenge which could entitle him to an earlier release, his sole federal remedy is
15 a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973).

16 “[A] state prisoner’s § 1983 action is barred (absent prior invalidation) - no matter the
17 relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state
18 conduct leading to conviction or internal prison proceedings) - *if* success in that action would
19 necessarily demonstrate the invalidity of confinement or its duration.” Wilkinson v. Dotson,
20 544 U.S. 74, 81-2, 125 S.Ct. 1242, 1248 (2005). Moreover, where a § 1983 action seeking
21 damages alleges constitutional violations that would necessarily imply the invalidity of the
22 conviction or sentence, the prisoner must establish that the underlying sentence or conviction
23 has been invalidated on appeal, by a habeas petition, or through some similar proceeding. See
24 Heck v. Humphrey, 512 U.S. 477, 483-87 (1994). The Supreme Court later clarified that
25 Heck’s principle (also known as the “favorable termination” rule) applies regardless of the
26 form of remedy sought, if the § 1983 action implicates the validity of an underlying conviction
27 or a prison disciplinary sanction. See Edwards v. Balisok, 520 U.S. 641, 646-48 (1997);
28 Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995) (concluding that § 1983 claims
similar to those in Heck are not cognizable); see also Muhammad v. Close, 540 U.S. 749, 754-
55 (2004) (per curiam).

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1 In the instant case, Plaintiff is incarcerated in state prison and challenges his sentence as
2 double jeopardy and his custody as false imprisonment. These allegations are insufficient to
3 state a § 1983 claim against any of the defendants. Because success on Plaintiff's claim would
4 entitle him to a release from prison, his sole federal remedy is a writ of habeas corpus.

5 Amendment is futile in this instance because the deficiencies identified herein cannot be
6 cured by amendment. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000); Schmier v.
7 U.S. Court of Appeals for the Ninth Circuit, 279 F.3d 817, 824 (9th Cir. 2002) (recognizing
8 "[f]utility of amendment" as a proper basis for dismissal without leave to amend); see also
9 Trimble, 49 F.3d at 586 (a civil rights complaint seeking habeas relief should be dismissed
10 without prejudice to filing as a petition for writ of habeas corpus).

11 Accordingly, this case shall be dismissed for failure to state a § 1983 claim, without
12 prejudice to filing a petition for writ of habeas corpus.

13 **V. CONCLUSION**

14 The Court finds that Plaintiff's Complaint fails to state any cognizable claims upon
15 which relief may be granted under § 1983, and the deficiencies outlined above are not capable
16 of being cured by amendment.

17 Therefore, based on the foregoing, IT IS HEREBY ORDERED that:

- 18 1. This action is DISMISSED for failure to state a claim upon which relief may be
19 granted under § 1983, without prejudice to filing a habeas corpus petition; and
- 20 2. The Clerk is directed to CLOSE this case.

21 IT IS SO ORDERED.
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23 Dated: February 22, 2017

/s/ Gary S. Austin
24 UNITED STATES MAGISTRATE JUDGE
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