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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

WILLIAM HENRY PRICE,

No. CIV S-08-1153-LKK-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

DAVID B. DILLION, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil rights action. Pending before the court are plaintiff’s second amended complaints (Doc. 31) and defendant’s motion to dismiss (Doc. 33).¹

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

_____ ¹ The motion to dismiss was filed before the court could screen the second amended complaint.

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
4 allege with at least some degree of particularity overt acts by specific defendants which support
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

8 9 **I. BACKGROUND**

10 In the first amended complaint, plaintiff now names Dillion, Risk Management,
11 Kroger's Insurance Company, Food-4-Less, Loss Prevention Resources, Ross, Jellison, and
12 Johnson. In the second amended complaint he continues to name Dillion, Risk Management,
13 Kroger's Insurance Company, Food-4-Less, Loss Prevention Resources, Ross, Jellison, and
14 Johnson, and adds Western World Insurance Co. As with his original and first amended
15 complaint, plaintiff invokes this court's federal question jurisdiction, and asserts racial
16 discrimination in violation of his civil rights under 42 U.S.C. §§ 1981, 1983, 1985, 1986, 2000a,
17 2000a-1, 2000a-2, 2000a-6, and/or 2000e. He also appears to assert claims of false
18 imprisonment and false arrest. According to plaintiff, in November 2002 he was singled out as
19 an African American and falsely accused of stealing merchandise from a Food-4-Less store.

20 Documents attached to the original complaint indicate that plaintiff fled the scene
21 after police arrived in response to a call from store personnel of a shoplifter. According to these
22 documents, which are not attached to the amended complaint, plaintiff was charged with petty
23 theft. In the original complaint, plaintiff states that defendants "relied on discriminatory hearsay
24 evidence to convict" him, seeming to indicate that he was found guilty of petty theft. Documents
25 attached to the second amended complaint clarify the underlying facts. Specifically, these
26 documents reveal that defendant Jellison, a loss prevention officer at defendant Food-4-Less,

1 completed a narrative stating that he observed plaintiff attempted to leave the store with a bottle
2 of alcohol concealed in his pants. According to Jellison, upon being contacted outside the store,
3 plaintiff fled and was later apprehended by an officer with the Oroville Police Department. The
4 responding officer – Eric Akins – completed a “Declaration of Probable cause for Detention and
5 Bail Setting” describing his apprehension of plaintiff. According to officer Akins, plaintiff had
6 an outstanding warrant at the time of his arrest. Plaintiff also attaches portions of a transcript of
7 a jury trial held in People v. Price, Butte County Superior Court case no. CM18201, a criminal
8 prosecution arising from the November 2002 arrest. According to plaintiff’s declaration
9 submitted in support of his second amended complaint, plaintiff is currently in custody,
10 apparently at High Desert State Prison in Susanville, California, as a result on a conviction
11 arising from the Butte County criminal prosecution.²

12 13 **II. DISCUSSION**

14 The alleged factual basis of plaintiff’s action is that he was not shoplifting and
15 that he was singled out solely based on his race. Based on documents attached to the second
16 amended complaint, it is clear that plaintiff was convicted following a jury trial and that he is
17 currently incarcerated as a result of that conviction. Where a civil rights action seeking
18 monetary damages or declaratory relief alleges constitutional violations which would necessarily
19 imply the invalidity of the prisoner’s underlying conviction or sentence, or the result of a prison
20 disciplinary hearing, such a claim is not cognizable unless the conviction or sentence has first
21 been invalidated on appeal, by habeas petition, or through some similar proceeding. See
22 Edwards v. Balisok, 520 U.S. 641, 646 (1987) (holding that § 1983 claim not cognizable because
23 allegations of procedural defects and a biased hearing officer implied the invalidity of the
24 underlying prison disciplinary sanction); Heck v. Humphrey, 512 U.S. 477, 483-84 (1994)

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² The court previously ordered plaintiff to provide details of that conviction and
the status of any appeal and/or post-conviction actions, but plaintiff has failed to do so.

1 (concluding that § 1983 not cognizable because allegations were akin to malicious prosecution
2 action which includes as an element a finding that the criminal proceeding was concluded in
3 plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997) (concluding that
4 § 1983 claim not cognizable because allegations of procedural defects were an attempt to
5 challenge substantive result in parole hearing).

6 Here, the court finds that success on plaintiff's civil rights action would
7 necessarily imply the invalidity of the underlying conviction for shoplifting from the Food-4-Less
8 store in November 2002. As stated above, the basis of plaintiff's case is that he, in fact, did not
9 steal from the Food-4-Less store and that his detention, arrest, and conviction were the result of
10 "Jim Crowism." Success in establishing that he did not steal from the Food-4-Less store in
11 November 2002, would necessarily mean that his conviction for doing so is invalid. In other
12 words, if he prevails in this case it will mean that he is actually innocent of shoplifting. For this
13 reason, the instant action constitutes a non-cognizable collateral attack on the state court
14 conviction. Because there is no indication that the conviction was been otherwise invalidated on
15 appeal or habeas corpus, the current civil rights action is barred.

17 III. CONCLUSION

18 Because it does not appear possible that the deficiencies identified herein can be
19 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
20 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

21 Based on the foregoing, the undersigned recommends that:

- 22 1. Plaintiff's second amended complaint (Doc. 31) be dismissed, without
23 leave to amend;
- 24 2. Defendants' motion to dismiss (Doc. 33) be granted;
- 25 3. All other pending motions and requests be denied as moot; and

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