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

RICHARD WALLACE,

Plaintiff,  
vs.

No. CIV S-09-0502 JAM EFB P

JERRY BROWN et. al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

Richard Wallace, an inmate confined at San Quentin State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). Plaintiff has filed a third amended complaint. *See* Dckt. No. 16. For the reasons set forth below, the court finds that plaintiff’s third amended complaint fails to state any claims for which relief can be granted under section 1983 and recommends that this action be dismissed with prejudice.

Pursuant to 28 U.S.C. § 1915A, the court shall review “a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a). “On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief

1 from a defendant who is immune from such relief.” *Id.* § 1915A(b).

2 On May 4, 2010, the court dismissed plaintiff’s complaint with leave to amend. The  
3 court held that plaintiff’s claims challenging the validity of his conviction or sentence were  
4 dismissed without leave to amend. Dckt. No. 7.

5 On February 8, 2011, the court dismissed plaintiff’s second amended complaint with  
6 leave to amend. Dckt. No. 8. The court reiterated that plaintiff’s claims challenging the validity  
7 of his conviction or sentence had been dismissed without leave to amend, and rejected plaintiff’s  
8 attempt to revive those complaints.

9 Plaintiff has now filed a third amended complaint. The court has reviewed it pursuant to  
10 28 U.S.C. § 1915A and finds it does not state a cognizable claim under section 1983. Plaintiff  
11 again alleges that his parole agent, Martinez Geiger, falsified his parole violation report, and that  
12 he was therefore unconstitutionally denied discharge from parole. He also alleges that parole  
13 officers Isabelle Voit and Sherri Green presented a falsified presentence report to the Superior  
14 Court in for his 2007 criminal conviction. He reported the falsification of his parole violation  
15 report to parole supervisor Laura Campoy, who did not investigate his claims. His criminal  
16 history and arrest records are outdated and incorrect and contain false information compiled by  
17 the Department of Justice, the Attorney General, Adult Probation, and the California Department  
18 of Corrections and Rehabilitation. He reported the inaccuracy of his records to California  
19 Attorney General Bill Lockyer, who responded that his records were accurate. Plaintiff has filed  
20 a series of habeas corpus petitions in Solano County Superior Court, the California Court of  
21 Appeal, and the California Supreme Court.

22 As the court has previously explained to plaintiff, his claims challenge the validity of his  
23 conviction or sentence. The Supreme Court has held that “a state prisoner’s § 1983 action is  
24 barred (absent prior invalidation)--no matter the relief sought (damages or equitable relief), no  
25 matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison  
26 proceedings)--if success in that action would necessarily demonstrate the invalidity of

1 confinement or its duration.” *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005) (emphasis added);  
2 *see also Edwards v. Balisok*, 520 U.S. 641 (1997); *Heck v. Humphrey*, 512 U.S. 477 (1994). If  
3 plaintiff were to succeed on his claims that defendants falsified records leading to the denial of  
4 parole, those findings would necessarily implicate the constitutionality of plaintiff’s current  
5 imprisonment. *See Heck*, 512 U.S. at 487. Although plaintiff alleges that he has filed habeas  
6 petitions in state court, he has not demonstrated that his sentence has previously been  
7 invalidated. Therefore, plaintiff cannot proceed under section 1983. Plaintiff may wish to file a  
8 federal habeas petition instead.

9       Accordingly, it is hereby RECOMMENDED that this action be dismissed for plaintiff’s  
10 failure to state a claim. *See* 28 U.S.C. § 1915A; *see also Lopez v. Smith*, 203 F.3d 1122, 1128  
11 (9th Cir. 2000) (indigent prisoner proceeding without counsel must be given leave to file  
12 amended complaint unless the court can rule out any possibility that the plaintiff could state a  
13 claim).

14       These findings and recommendations are submitted to the United States District Judge  
15 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
16 after being served with these findings and recommendations, any party may file written  
17 objections with the court and serve a copy on all parties. Such a document should be captioned  
18 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
19 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
20 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

21 Dated: May 31, 2011.

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24 EDMUND F. BRENNAN  
25 UNITED STATES MAGISTRATE JUDGE  
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