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

DANNY STEELE,

Plaintiff,

No. CIV S-09-1769 LKK GGH PS

vs.

MICHAEL STEELE, et al.,

ORDER

Defendants.

_____ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). Plaintiff has been without funds for six months and is currently without funds. Accordingly, the court will not assess an initial partial filing fee. 28 U.S.C. § 1915(b)(1). Plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments shall be collected

1 and forwarded by the appropriate agency to the Clerk of the Court each time the amount in
2 plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

3 The court is required to screen complaints brought by prisoners seeking relief
4 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
5 § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised
6 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be
7 granted, or that seek monetary relief from a defendant who is immune from such relief. 28
8 U.S.C. § 1915A(b)(1),(2).

9 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
11 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
12 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
13 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
14 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
15 Cir. 1989); Franklin, 745 F.2d at 1227.

16 A complaint must contain more than a "formulaic recitation of the elements of a
17 cause of action;" it must contain factual allegations sufficient to "raise a right to relief above the
18 speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
19 "The pleading must contain something more...than...a statement of facts that merely creates a
20 suspicion [of] a legally cognizable right of action." Id., quoting 5 C. Wright & A. Miller, Federal
21 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). "[A] complaint must contain sufficient
22 factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft
23 v. Iqbal, No. 07-1015, 2009 WL 1361536 at *12 (May 18, 2009). "A claim has facial plausibility
24 when the plaintiff pleads factual content that allows the court to draw the reasonable inference
25 that the defendant is liable for the misconduct alleged." Id. In reviewing a complaint under this
26 standard, the court must accept as true the allegations of the complaint in question, Hospital

1 Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
2 most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v.
3 McKeithen, 395 U.S. 411, 421 (1969).

4 The complaint alleges that defendant Michael Steele was instrumental in
5 plaintiff's arrest. It further alleges defendants Michael and Susan Steele "conspire[d] with the
6 police and District Attorney to fraudulently take plaintiff's property and other business rights by
7 filling out fraudulent and perjur[i]ous affidavits and testimonies during the period from
8 plaintiff's arrest in 2001 till his sentencing in 2005." Compl., ¶ 7. Although the claims are for
9 wage loss, loss of family inheritance, emotional strain, loss of property and loss of earning
10 capacity, plaintiff references the constitution as a basis for these claims, including the 5th and 14th
11 Amendments and equal protection. Plaintiff seeks monetary damages and an injunction
12 preventing defendants from liquidating his property, as well as other relief.

13 Plaintiff appears to be alleging that there was no probable cause to arrest him,
14 because the arrest was based on Michael Steele's misconduct and improper involvement. The
15 allegations of actions by Michael and Susan Steele following his arrest appear to assert violations
16 of due process protections in regard to his criminal prosecution in state court.

17 As such, this action may be barred by Heck v. Humphrey, 512 U.S. 477, 114 S.
18 Ct. 2364 (1994). In Heck, an Indiana state prisoner brought a civil rights action under § 1983 for
19 damages. Claiming that state and county officials violated his constitutional rights, he sought
20 damages for improprieties in the investigation leading to his arrest, for the destruction of
21 evidence, and for conduct during his trial ("illegal and unlawful voice identification procedure").
22 Convicted on voluntary manslaughter charges, and serving a fifteen year term, plaintiff did not
23 seek injunctive relief or release from custody. The United States Supreme Court affirmed the
24 Court of Appeal's dismissal of the complaint and held that:

25 in order to recover damages for allegedly unconstitutional
26 conviction or imprisonment, or for other harm caused by actions
 whose unlawfulness would render a conviction or sentence invalid,

1 a § 1983 plaintiff must prove that the conviction or sentence has
2 been reversed on direct appeal, expunged by executive order,
3 declared invalid by a state tribunal authorized to make such
4 determination, or called into question by a federal court's issuance
5 of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages
6 bearing that relationship to a conviction or sentence that has not
7 been so invalidated is not cognizable under 1983.

8 Heck, 512 U.S. at 486, 114 S. Ct. at 2372. The Court expressly held that a cause of action for
9 damages under § 1983 concerning a criminal conviction or sentence cannot exist unless the
10 conviction or sentence has been invalidated, expunged or reversed. Id.

11 Plaintiff's claims against defendants Michael and Susan Steele implicating the
12 validity of his conviction are barred unless the conviction has been invalidated, expunged or
13 reversed. Accordingly, this complaint is dismissed with leave to amend because there is no claim
14 by plaintiff that his conviction has been invalidated, expunged or reversed.

15 Furthermore, the constitutional grounds alleged require state action, and the
16 defendants here are not state actors. In order to state a claim under 42 U.S.C. § 1983,¹ plaintiff
17 must allege: (1) the violation of a federal constitutional or statutory right; and (2) that the
18 violation was committed by a person acting under color of state law. West v. Atkins, 487 U.S.
19 42, 48, 108 S. Ct. 2250 (1988). “[P]rivate parties are not generally acting under color of state
20 law, and . . . ‘ “[c]onclusionary allegations, unsupported by facts, [will be] rejected as
21 insufficient to state a claim under the Civil Rights Act.’ ” Jones v. Community Redevelopment
22 Agency, 733 F.2d 646, 649 (9th Cir.1984) (citation omitted).” Price v. State of Hawaii, 939 F.2d
23 702, 707 -708 (9th Cir. 1991).

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25 ¹ 42 U.S.C. § 1983 provides: “Every person who, under color of [state law] . . . subjects,
26 or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights,
privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress.”

