

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se and 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).

By order of September 16, 2009, plaintiff was informed of the deficiencies in his complaint and given the opportunity to file an amended complaint. Plaintiff’s amended complaint has now been reviewed.

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

1 U.S.C. § 1915A(b)(1),(2).

2 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
3 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28
4 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
5 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
6 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
7 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
8 Cir. 1989); Franklin, 745 F.2d at 1227.

9 A complaint must contain more than a “formulaic recitation of the elements of a
10 cause of action;” it must contain factual allegations sufficient to “raise a right to relief above the
11 speculative level.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S. Ct. 1955, 1965 (2007).
12 “The pleading must contain something more...than...a statement of facts that merely creates a
13 suspicion [of] a legally cognizable right of action.” Id., quoting 5 C. Wright & A. Miller, Federal
14 Practice and Procedure 1216, pp. 235-235 (3d ed. 2004). “[A] complaint must contain sufficient
15 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft
16 v. Iqbal, ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009). “A claim has facial plausibility when the
17 plaintiff pleads factual content that allows the court to draw the reasonable inference that the
18 defendant is liable for the misconduct alleged.” Id. In reviewing a complaint under this
19 standard, the court must accept as true the allegations of the complaint in question, Hospital
20 Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light
21 most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. Jenkins v.
22 McKeithen, 395 U.S. 411, 421 (1969).

23 The amended complaint alleges that defendant Michael Steele was instrumental in
24 plaintiff’s arrest. It further alleges defendants Michael and Susan Steele along with newly added
25 defendant district attorney John O’Mara “did conspire to, and acting under ‘color of law,’
26 fraudulently take plaintiff’s property and other business interests by filling out fraudulent and

1 perjurious affidavits and testimonies during the period from [plaintiff's arrest in] 2001 till his
2 sentencing in 2005." A.C., at 2-3. The asserted bases for these claims are the 4th, 5th, 6th, 8th, and
3 14th Amendments to the Constitution. Plaintiff seeks monetary damages and a variety of
4 injunctive relief, including an order preventing defendants from liquidating his property.

5 Plaintiff appears to be alleging that there was no probable cause to arrest him,
6 because the arrest was based on Michael Steele's misconduct and improper involvement. The
7 allegations of actions by Michael and Susan Steele, as well as prosecuting attorney John O'Mara
8 following his arrest appear to assert violations of due process protections in regard to his criminal
9 prosecution in state court.

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

19 in order to recover damages for allegedly unconstitutional
20 conviction or imprisonment, or for other harm caused by actions
21 whose unlawfulness would render a conviction or sentence invalid,
22 a § 1983 plaintiff must prove that the conviction or sentence has
23 been reversed on direct appeal, expunged by executive order,
24 declared invalid by a state tribunal authorized to make such
25 determination, or called into question by a federal court's issuance
26 of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages
bearing that relationship to a conviction or sentence that has not
been so invalidated is not cognizable under 1983.

26 Heck, 512 U.S. at 486, 114 S. Ct. at 2372. The Court expressly held that a cause of action for

1 damages under § 1983 concerning a criminal conviction or sentence cannot exist unless the
2 conviction or sentence has been invalidated, expunged or reversed. Id.

3 Plaintiff's claims against defendants Michael and Susan Steele implicating the
4 validity of his conviction are barred unless the conviction has been invalidated, expunged or
5 reversed. On amendment, plaintiff does not unequivocally assert that his conviction has been
6 invalidated, expunged or reversed. The only possible reference to this issue is plaintiff's vague
7 declaration "that state court invalidates original imposition of sentence and that plaintiff
8 accordingly meets all standard legal tests barring this suit from further proceedings." A.C. at 7.
9 This unclear reference is not sufficient to avoid a Heck bar.

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

19 As plaintiff continues to allege that Michael and Susan Steele are state actors, and
20 continues to bring his claim under 42 U.S.C. § 1983, these defendants must be dismissed.

21 In regard to newly added defendant O'Mara, to the extent that plaintiff seeks
22 allege violations of his civil rights in regard to his criminal prosecution, his claim fails.

23
24 ¹ 42 U.S.C. § 1983 provides: "Every person who, under color of [state law] . . . subjects,
25 or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights,
26 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."

1 Prosecutors are absolutely immune from civil suits for damages under § 1983 which challenge
2 activities related to the initiation and presentation of criminal prosecutions. Imbler v. Pachtman,
3 424 U.S. 409 (1976). Determining whether a prosecutor's actions are immunized requires a
4 functional analysis. The classification of the challenged acts, not the motivation underlying
5 them, determines whether absolute immunity applies. Ashelman v. Pope, 793 F.2d 1072 (9th
6 Cir. 1986)(en banc). The prosecutor's quasi-judicial functions, rather than administrative or
7 investigative functions, are absolutely immune. Thus, even charges of malicious prosecution,
8 falsification of evidence, coercion of perjured testimony and concealment of exculpatory
9 evidence will be dismissed on grounds of prosecutorial immunity. See Stevens v. Rifkin, 608
10 F.Supp. 710, 728 (N.D. Cal. 1984).

11 As plaintiff already has had the opportunity to cure most of these defects, and
12 prosecutorial immunity is not capable of being cured on amendment, it is recommended that the
13 complaint be dismissed without leave to further amend.

14 In accordance with the above, IT IS HEREBY RECOMMENDED that this action
15 be dismissed with prejudice.

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
18 fourteen days after being served with these findings and recommendations, plaintiff may file
19 written objections with the court. The document should be captioned "Objections to Magistrate
20 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
21 within the specified time may waive the right to appeal the District Court's order. Martinez v.
22 Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: January 25, 2010

24 /s/ Gregory G. Hollows

25 UNITED STATES MAGISTRATE JUDGE