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

COREY D. SPECK,

Plaintiff,

No. CIV S-09-3440 GEB EFB P

vs.

SHASTA COUNTY SHERIFF  
DEPARTMENT, et al.,

Defendants.

ORDER AND  
FINDINGS AND RECOMMENDATIONS

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Corey D. Speck, an inmate, filed this pro se civil rights action under 42 U.S.C. § 1983. In addition to filing a complaint, plaintiff has filed an application to proceed in forma pauperis. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). For the reasons set forth below, the court finds that plaintiff’s complaint fails to state any claims for which relief can be granted under section 1983 and recommends that this action be dismissed with prejudice.

**I. Request to Proceed In Forma Pauperis**

Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Dckt. No. 2. Plaintiff’s application makes the showing required by 28 U.S.C. § 1915(a)(1) and (2). Accordingly, by separate order, the court directs the agency having custody of plaintiff to

1 collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.  
2 § 1915(b)(1) and (2).

3 **II. Screening Order**

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

10 A district court must construe a pro se pleading “liberally” to determine if it states a  
11 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an  
12 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While  
13 detailed factual allegations are not required, “[t]hreadbare recitals of the elements of a cause of  
14 action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct.  
15 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff  
16 must set forth “sufficient factual matter, accepted as true, to ‘state a claim to relief that is  
17 plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

18 A claim has facial plausibility when the plaintiff pleads factual content that allows  
19 the court to draw the reasonable inference that the defendant is liable for the  
20 misconduct alleged. The plausibility standard is not akin to a “probability  
21 requirement,” but it asks for more than a sheer possibility that a defendant has  
acted unlawfully. Where a complaint pleads facts that are merely consistent with a  
defendant’s liability, it stops short of the line between possibility and plausibility  
of entitlement to relief.

22 *Id.* (citations and quotation marks omitted). Although legal conclusions can provide the  
23 framework of a complaint, they must be supported by factual allegations, and are not entitled to  
24 the assumption of truth. *Id.* at 1950.

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1 The Civil Rights Act under which this action was filed provides:

2 Every person who, under color of [state law] . . . subjects, or causes to be  
3 subjected, any citizen of the United States . . . to the deprivation of any rights,  
4 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 . . .

5 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts  
6 establish the defendant's personal involvement in the constitutional deprivation or a causal  
7 connection between the defendant's wrongful conduct and the alleged constitutional deprivation.  
8 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44  
9 (9th Cir. 1978).

10 The court has reviewed plaintiff's complaint pursuant to 28 U.S.C. § 1915A and finds it  
11 does not state a cognizable claim. Plaintiff's complaint states that Deputy McQuillan pulled him  
12 over because he was a minority and conducted an illegal search of his vehicle. He states that he  
13 has been falsely imprisoned and that the officers lied and violated his fourth amendment rights.  
14 He requests that the officers be fired and have charges brought against them and that he be  
15 compensated. Dckt. No. 1 at 3. Plaintiff's claims challenge the validity of his conviction or  
16 sentence. The Supreme Court has held that "a state prisoner's § 1983 action is barred (absent  
17 prior invalidation)--no matter the relief sought (damages or equitable relief), no matter the target  
18 of the prisoner's suit (state conduct leading to conviction or internal prison proceedings)--if  
19 success in that action would necessarily demonstrate the invalidity of confinement or its  
20 duration." *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005) (emphasis added); *see also Edwards*  
21 *v. Balisok*, 520 U.S. 641 (1997); *Heck v. Humphrey*, 512 U.S. 477 (1994). Were plaintiff to  
22 succeed on his claims that defendants violated his fourth amendment rights, those findings would  
23 necessarily implicate the constitutionality of plaintiff's imprisonment. *See Heck*, 512 U.S. at  
24 487. Plaintiff has not demonstrated that his sentence has previously been invalidated. His  
25 claims challenging the validity of his conviction should therefore be dismissed without leave to  
26 amend.

1 Accordingly, it is hereby ORDERED that:

2 1. Plaintiff's motion to proceed *in forma pauperis* is granted.

3 Further, it is hereby RECOMMENDED that this action be dismissed for plaintiff's failure  
4 to state a claim. *See* 28 U.S.C. § 1915A; *see also Lopez v. Smith*, 203 F.3d 1122, 1128 (9th Cir.  
5 2000) (indigent prisoner proceeding without counsel must be given leave to file amended  
6 complaint unless the court can rule out any possibility that the plaintiff could state a claim).

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

14 Dated: March 30, 2011.

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17 EDMUND F. BRENNAN  
18 UNITED STATES MAGISTRATE JUDGE  
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