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

ANDRE RAMON CRAVER,

Plaintiff,

No. CIV S-10-1880 EFB P

vs.

SACRAMENTO COUNTY,

Defendant.

ORDER

_____/

Andre Ramon Craver, an inmate confined at High Desert State Prison, filed this pro se civil rights action under 42 U.S.C. § 1983. On November 17, 2010, this court dismissed the complaint with leave to amend, finding that plaintiff had not stated a cognizable claim. Currently before the court is petitioner’s amended complaint. Dckt. No. 11. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1) and is before the undersigned pursuant to plaintiff’s consent. *See* E.D. Cal. Local Rules, Appx. A, at (k)(4).

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

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous,
2 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
3 from a defendant who is immune from such relief.” *Id.* § 1915A(b).

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

12 A claim has facial plausibility when the plaintiff pleads factual content that allows
13 the court to draw the reasonable inference that the defendant is liable for the
14 misconduct alleged. The plausibility standard is not akin to a “probability
15 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.

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

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

20 Every person who, under color of [state law] . . . subjects, or causes to be
21 subjected, any citizen of the United States . . . to the deprivation of any rights,
22 privileges, or immunities secured by the Constitution and laws, shall be liable to
the party injured in an action at law, suit in equity, or other proper proceeding for
redress

23 42 U.S.C. § 1983. “[A] claim for violation of state law is not cognizable under § 1983.”

24 *Cornejo v. County of San Diego*, 504 F.3d 853, 855 n.3 (9th Cir. 2007). In addition, an
25 individual defendant is not liable on a civil rights claim unless the facts establish the defendant’s
26 personal involvement in the deprivation of a federal right or a causal connection between the

1 defendant's wrongful conduct and the alleged deprivation. *See Hansen v. Black*, 885 F.2d 642,
2 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978).

3 The court has reviewed plaintiff's amended complaint pursuant to 28 U.S.C. § 1915A
4 and finds that plaintiff has again failed to state a cognizable claim. Plaintiff continues to allege
5 that defendant Sacramento County has deprived him certain constitutional rights by not paying
6 for an attorney to represent him in pursuing a motion under California Penal Code § 1405. That
7 statute provides: "A person who was convicted of a felony and is currently serving a term of
8 imprisonment may make a written motion before the trial court that entered the judgment of
9 conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing."
10 Cal. Pen. Code § 1405(a). It further provides that counsel must be appointed to an indigent
11 defendant who wishes to prepare a motion for DNA testing upon a request that conforms to
12 certain requirements. *Id.* § 1405(b). In plaintiff's case, the Sacramento County Superior Court
13 granted his request for counsel to prepare a § 1405 motion, but, because the California
14 Legislature has suspended funding for counsel under § 1405 at present, ordered that plaintiff's
15 representation begin only when funding is restored by the legislature. Petitioner alleged in his
16 initial complaint that the Superior Court's order deprived him of his rights to counsel, to access
17 the courts, and to equal protection. Petitioner now alleges that this order has deprived him of his
18 "to access evidence for post-conviction DNA testing" and that, at his criminal trial, he was
19 deprived of his right to present a defense.

20 As noted in the original screening order, "a criminal defendant has no right to counsel
21 beyond his first appeal in pursuing state discretionary or collateral review[.]" *Coleman v.*
22 *Thompson*, 501 U.S. 722, 756 (1991). Thus, plaintiff has no constitutional right to counsel in a
23 § 1405 proceeding. Denial of counsel to an indigent person in such a proceeding does not
24 violate the Equal Protection Clause of the Fourteenth Amendment. *Ross v. Moffitt*, 417 U.S.
25 600, 612 (1974). Thus, plaintiff's claims that he has been denied his rights to counsel and equal
26 protection lack facial plausibility, because he has not alleged facts that would establish violation

1 of those constitutional provisions.

2 Plaintiff's allegations that he was deprived of counsel in a collateral DNA proceeding
3 under § 1405 do not state a plausible claim for denial of access to the courts, either, as the right
4 to access the courts does not require the state to enable a prisoner to litigate effectively by, for
5 example, appointing counsel. *Lewis v. Carey*, 518 U.S. 343, 354 (1996).

6 To the extent plaintiff alleges that the state court's order violates § 1405 or other state
7 law, such a claim does not arise under the federal Constitution or laws and is thus not cognizable
8 in this federal civil rights action. *Cornejo*, 504 F.3d at 855 n.3.

9 Plaintiff's new assertion of a federal constitutional right to access DNA evidence for
10 testing also lacks facial plausibility. The United States Supreme Court has recently held that
11 there is no freestanding federal constitutional right to access DNA evidence. *D.A.'s Office v.*
12 *Osborne*, ___ U.S. ___, 129 S. Ct. 2308, 2322-23, 174 L. Ed. 38 (2009). To the extent that it
13 may be argued that state law (here, § 1405) creates a liberty interest in accessing DNA evidence
14 that is protected by the Due Process Clause, the Supreme Court has not indicated that due
15 process requires the provision of counsel to an inmate seeking such access. *See id.* (holding that
16 allowing discovery, including discovery of DNA, within limits, plus exempting claims of
17 innocence supported by a sufficient quantum of new evidence from otherwise applicable time
18 limits provided sufficient process). Such a holding would run directly against the Court's
19 previous rulings that the Constitution does not require a state to provide counsel in post-trial
20 collateral proceedings.

21 To the extent plaintiff alleges that his constitutional rights were violated at his trial, such
22 claims must be brought via petition for writ of habeas corpus rather than in a civil rights action
23 under § 1983. *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973); *Ramirez v. Galaza*, 334 F.3d 850,
24 855-56 (9th Cir. 2003).

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1 As plaintiff has failed to state a cognizable claim despite having been provided the
2 opportunity to do so, it is hereby ORDERED that this action is dismissed without leave to amend
3 and the Clerk is directed to CLOSE the case.

4 Dated: March 2, 2011.



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6 EDMUND F. BRENNAN
7 UNITED STATES MAGISTRATE JUDGE
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