

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

PRAKASH NARAYAN,

Plaintiff,

No. CIV S-10-3485 JAM DAD PS

v.

CALIFORNIA FAIR EMPLOYMENT  
AND HOUSING, et al.,

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Defendants.

\_\_\_\_\_/

This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a)(1). Plaintiff’s request for leave to proceed in forma pauperis will therefore be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the inquiry required by the statutes. Under 28 U.S.C. § 1915(e)(2), the court is required to dismiss an in forma pauperis case at any time if the plaintiff’s allegations of poverty is untrue or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. To state a claim on which relief may be

1 granted, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its  
2 face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim is frivolous when it lacks  
3 an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989);  
4 Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1990).

5 In considering whether a complaint states a cognizable claim, the court accepts as  
6 true the material allegations in the complaint and construes the allegations in the light most  
7 favorable to the plaintiff. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984); Hosp. Bldg. Co.  
8 v. Trustees of Rex Hosp., 425 U.S. 738, 740 (1976); Love v. United States, 915 F.2d 1242, 1245  
9 (9th Cir. 1989). Pro se pleadings are held to a less stringent standard than those drafted by  
10 lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972). However, the court need not accept as  
11 true conclusory allegations, unreasonable inferences, or unwarranted deductions of fact. Western  
12 Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981).

13 The minimum requirements for a civil complaint in federal court are as follows:

14 A pleading which sets forth a claim for relief . . . shall contain (1) a  
15 short and plain statement of the grounds upon which the court’s  
16 jurisdiction depends . . . , (2) a short and plain statement of the  
claim showing that the pleader is entitled to relief, and (3) a  
demand for judgment for the relief the pleader seeks.

17 Fed. R. Civ. P. 8(a).

18 Although the Federal Rules of Civil Procedure adopt a flexible pleading policy, a  
19 complaint must give the defendant fair notice of the plaintiff’s claims and must allege facts that  
20 state the elements of each claim plainly and succinctly. Fed. R. Civ. P. 8(a)(2); Jones v.  
21 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). “A pleading that offers ‘labels  
22 and conclusions’ or ‘a formulaic recitation of the elements of cause of action will not do.’ Nor  
23 does a complaint suffice if it tenders ‘naked assertions’ devoid of ‘further factual  
24 enhancements.’” Ashcroft v. Iqbal, --- U.S.---, ---, 129 S. Ct. 1937, 1949 (2009) (quoting  
25 Twombly, 550 U.S. at 555, 557. A plaintiff must allege with at least some degree of particularity  
26 overt acts which the defendants engaged in that support the plaintiff’s claims. Jones, 733 F.2d at

1 649. A complaint must also contain “a short and plain statement of the grounds for the court’s  
2 jurisdiction” and “a demand for the relief sought.” Fed. R. Civ. P. 8(a)(1) & 8(a)(3).

3 Here, plaintiff alleges in his complaint that the California Department of Fair  
4 Employment and Housing (“DFEH”), the Attorney General of the State of California, the City of  
5 Sacramento, the Sacramento Police Department, the Sacramento County District Attorney, the  
6 California Commission on Judicial Performance and the California State Bar have violated his  
7 right to a “fair trial, fair jury, fair trial judge and fair appeal.” (Compl. (Doc. No. 1) at 1.)  
8 Specifically, plaintiff alleges that the named defendants failed to investigate plaintiff’s wrongful  
9 termination and that they fabricated evidence that was used against plaintiff in a civil trial in state  
10 court, which plaintiff characterizes as “fraudulent,” concerning plaintiff’s alleged wrongful  
11 termination. (Id. at 1-17.)

12 Plaintiff’s complaint is deficient in several respects. First, the Eleventh  
13 Amendment serves as a jurisdictional bar to suits brought by private parties against a state or  
14 state agency unless the state or the agency consents to such suit. See Quern v. Jordan, 440 U.S.  
15 332, 340 (1979); Alabama v. Pugh, 438 U.S. 781, 782 (1978); Lupert v. California State Bar, 761  
16 F.2d 1325, 1327 (9th Cir. 1985); Jackson v. Hayakawa, 682 F.2d 1344, 1349-50 (9th Cir. 1982);  
17 see also Pennhurst State School & Hosp. v. Halderman, 465 U.S. 89, 121 (1984) (“[A] claim that  
18 state officials violated state law in carrying out their official responsibilities is a claim against the  
19 State that is protected by the Eleventh Amendment.”); Aholelei v. Department of Public Safety,  
20 488 F.3d 1144, 1147 (9th Cir. 2007) (“The Eleventh Amendment bars suits for money damages  
21 in federal court against a state, its agencies, and state officials acting in their official capacities.”)  
22 In the instant case, none of the state agencies or state officials named by plaintiff as defendants in  
23 this action has consented to suit.

24 Second, with respect to the City of Sacramento, the Sacramento County District  
25 Attorney and the Sacramento Police Department, such entities cannot be held liable for an injury  
26 inflicted solely by an employee under a theory of respondeat superior. Polk County v. Dodson,

1 454 U.S. 312, 325 (1981); Monell v. Dep't of Social Services, 436 U.S. 658, 691 (1978); Gibson  
2 v. County of Washoe, Nev., 290 F.3d 1175, 1185 (9th Cir. 2002), cert. denied, 537 U.S. 1106  
3 (2003) (describing the two routes to municipal liability, where municipality's official policy,  
4 regulation or decision violated plaintiff's rights, or alternatively where municipality failed to act  
5 under circumstances showing its deliberate indifference to plaintiff's rights.)

6 Third, the vague and conclusory allegations found in plaintiff's complaint fail to  
7 identify any individual who allegedly acted under color of state law. In this regard, the Civil  
8 Rights Act under which this action was filed provides as follows:

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

14 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
15 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
16 Monell, 436 U.S. 658; Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the  
17 deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act,  
18 participates in another's affirmative acts or omits to perform an act which he is legally required  
19 to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740,  
20 743 (9th Cir. 1978). Moreover, supervisory personnel are generally not liable under § 1983 for  
21 the actions of their employees under a theory of respondeat superior and, therefore, when a  
22 named defendant holds a supervisory position, the causal link between him and the claimed  
23 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862  
24 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory  
25 allegations concerning the involvement of official personnel in civil rights violations are not  
26 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

Finally, the majority of the allegations found in plaintiff's complaint concern  
errors that allegedly occurred during his state court civil trial and the related state appellate

1 review. Under the Rooker-Feldman doctrine, federal district courts lack jurisdiction to review  
2 alleged errors in state court decisions. Dist. of Columbia Court of Appeals v. Feldman, 460 U.S.  
3 462, 476 (1983) (holding that review of state court determinations can be obtained only in the  
4 United States Supreme Court). The doctrine applies to “cases of the kind from which the  
5 doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by  
6 state-court judgments rendered before the district court proceedings commenced and inviting  
7 district court review and rejection of those judgments.” Exxon Mobil Corp. v. Saudi Basic  
8 Indus. Corp., 544 U.S. 280, 284 (2005). “The purpose of the doctrine is to protect state  
9 judgments from collateral federal attack.” Doe & Assocs. Law Offices v. Napolitano, 252 F.3d  
10 1026, 1030 (9th Cir. 2001). Pursuant to this doctrine, a federal district court is prohibited from  
11 exercising subject matter jurisdiction over a suit that is “a de facto appeal” from a state court  
12 judgment. Kougasian v. TMSL, Inc., 359 F.3d 1136, 1139 (9th Cir. 2004). A federal district  
13 court may not examine claims that are inextricably intertwined with state court decisions, “even  
14 where the party does not directly challenge the merits of the state court’s decision but rather  
15 brings an indirect challenge based on constitutional principles.” Bianchi v. Rylaarsdam, 334  
16 F.3d 895, 900 n.4 (9th Cir. 2003). See also Ignacio v. Judges of U.S. Court of Appeals, 453 F.3d  
17 1160, 1165-66 (9th Cir. 2006) (affirming district court’s dismissal of the case “because the  
18 complaint is nothing more than another attack on the California superior court’s determination in  
19 [plaintiff’s] domestic case”).

20 For all the reasons set forth above, plaintiff’s complaint fails to satisfy the  
21 minimum requirements for a civil complaint in federal court and does not state a cognizable  
22 claim. Accordingly, plaintiff’s complaint will be dismissed for failure to state a claim.

23 The undersigned has carefully considered whether plaintiff may amend his  
24 complaint to state a claim upon which relief can be granted. “Valid reasons for denying leave to  
25 amend include undue delay, bad faith, prejudice, and futility.” California Architectural Bldg.  
26 Prod. v. Franciscan Ceramics, 818 F.2d 1466, 1472 (9th Cir. 1988). See also Klamath-Lake

1 Pharm. Ass'n v. Klamath Med. Serv. Bureau, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that  
2 while leave to amend shall be freely given, the court does not have to allow futile amendments).  
3 In light of the obvious deficiencies of plaintiff's complaint noted above, the court finds that it  
4 would be futile to grant plaintiff leave to amend.

5 Accordingly, IT IS HEREBY ORDERED that plaintiff's December 30, 2010  
6 application to proceed in forma pauperis (Doc. No. 2) is granted.

7 IT IS RECOMMENDED that:

- 8 1. Plaintiff's December 30, 2010 complaint (Doc. No. 1) be dismissed without  
9 leave to amend; and  
10 2. This action be dismissed.

11 These findings and recommendations will be submitted to the United States  
12 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within  
13 fourteen (14) days after being served with these findings and recommendations, plaintiff may file  
14 written objections with the court. A document containing objections should be titled "Objections  
15 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file  
16 objections within the specified time may, under certain circumstances, waive the right to appeal  
17 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: May 25, 2011.

19  
20   
21 \_\_\_\_\_  
22 DALE A. DROZD  
23 UNITED STATES MAGISTRATE JUDGE

21 DAD:6  
22 Ddad1\orders.prose\narayan3485.ifp.f&rs