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

VICTOR M. CORREA,

Plaintiff,

No. CIV S-11-0092 MCE EFB P

vs.

SUPERIOR COURT OF
SACRAMENTO,

Defendant.

ORDER AND
AND FINDINGS AND RECOMMENDATIONS

Victor M. Correa, an inmate confined at High Desert State Prison, 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 § 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 collect and forward the appropriate monthly payments for the filing fee as set forth in 28 U.S.C.

1 § 1915(b)(1) and (2).

2 **II. Screening Order**

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

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

17 A claim has facial plausibility when the plaintiff pleads factual content that allows
18 the court to draw the reasonable inference that the defendant is liable for the
19 misconduct alleged. The plausibility standard is not akin to a “probability
20 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.

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

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

25 Every person who, under color of [state law] . . . subjects, or causes to be
26 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

1 party injured in an action at law, suit in equity, or other proper proceeding for
2 redress

3 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
4 establish the defendant’s personal involvement in the constitutional deprivation or a causal
5 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
6 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
7 (9th Cir. 1978)

8 The court has reviewed plaintiff’s complaint pursuant to 28 U.S.C. § 1915A and finds it
9 does not state a cognizable claim. Plaintiff’s claim is against the Sacramento County Superior
10 Court, a state trial court. Plaintiff contends that defendant court deprived him of due process and
11 access to the court when it denied his request for transcripts.

12 The Eleventh Amendment prohibits federal jurisdiction over suits against the state or a
13 state agency unless the state or agency consents to the suit. *See Seminole Tribe of Florida v.*
14 *Florida*, 517 U.S. 44, 53, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996); *Pennhurst State School &*
15 *Hospital v. Halderman*, 465 U.S. 89, 100, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984); *Quern v.*
16 *Jordan*, 440 U.S. 332, 342, 99 S. Ct. 1139, 59 L. Ed. 2d 358 (1979). The Sacramento County
17 Superior Court is a state agency and thus this suit is barred by the Eleventh Amendment.
18 *Greater Los Angeles Council on Deafness v. Zolin*, 812 F.2d 1103, 1107 (9th Cir. 1987).
19 Further, the Sacramento County Superior Court, as a state agency, is not a “person” that can be
20 liable under § 1983. *See Will v. Michigan Dept. Of State Police*, 491 U.S. 58, 109 S. Ct. 2304,
21 105 L. Ed. 2d 45 (1989).

22 **III. Order and Recommendation**

23 Accordingly, it is hereby ORDERED that:

- 24 1. Plaintiff’s request to proceed *in forma pauperis* is granted.

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1 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected in
2 accordance with the notice to the Director of the California Department of Corrections and
3 Rehabilitation filed concurrently herewith.

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

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

15 Dated: March 15, 2011.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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