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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUBEN SOLIZ,

 Plaintiff,

 v.

TEHAMA COUNTY SUPERIOR
COURT,

 Defendant.

No. 2:16-cv-1897-EFB P

ORDER GRANTING IFP AND DISMISSING
ACTION PURSUANT TO 28 U.S.C. § 1915A

Plaintiff, a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983, has filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.¹

I. Request to Proceed In Forma Pauperis

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. § 1915(b)(1) and (2).

II. Screening Requirement and Standards

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.

¹ 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). ECF No. 1 at 4.

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

5 A pro se plaintiff, like other litigants, must satisfy the pleading requirements of Rule 8(a)
6 of the Federal Rules of Civil Procedure. Rule 8(a)(2) “requires a complaint to include a short and
7 plain statement of the claim showing that the pleader is entitled to relief, in order to give the
8 defendant fair notice of what the claim is and the grounds upon which it rests.” *Bell Atl. Corp. v.*
9 *Twombly*, 550 U.S. 544, 554, 562-563 (2007) (citing *Conley v. Gibson*, 355 U.S. 41 (1957)).
10 While the complaint must comply with the “short and plain statement” requirements of Rule 8,
11 its allegations must also include the specificity required by *Twombly* and *Ashcroft v. Iqbal*, 556
12 U.S. 662, 679 (2009).

13 To avoid dismissal for failure to state a claim a complaint must contain more than “naked
14 assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause of
15 action.” *Twombly*, 550 U.S. at 555-557. In other words, “[t]hreadbare recitals of the elements of
16 a cause of action, supported by mere conclusory statements do not suffice.” *Iqbal*, 556 U.S. at
17 678.

18 Furthermore, a claim upon which the court can grant relief must have facial plausibility.
19 *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual
20 content that allows the court to draw the reasonable inference that the defendant is liable for the
21 misconduct alleged.” *Iqbal*, 556 U.S. at 678. When considering whether a complaint states a
22 claim upon which relief can be granted, the court must accept the allegations as true, *Erickson v.*
23 *Pardus*, 551 U.S. 89 (2007), and construe the complaint in the light most favorable to the
24 plaintiff, *see Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

25 **III. Screening Order**

26 The court has reviewed plaintiff’s complaint (ECF No. 1) pursuant to § 1915A and finds it
27 must be dismissed for failure to state a claim. Plaintiff alleges that his public defender first
28 brought him an offer of 32 months in prison, with half time. Plaintiff rejected that offer and

1 subsequently accepted what he thought was an agreement to four years at half time. Plaintiff later
2 learned that the deal was four years at 85 percent, so he “pulled the deal.” ECF No. 1, § III.
3 Through this action, plaintiff requests that the court give him a sentence of four years with half
4 time. *Id.*, § IV. It is unclear whether plaintiff is currently serving the challenged sentence. He
5 names the Tehama County Superior Court as defendant.

6 This action must be dismissed because this court cannot provide plaintiff with the relief he
7 seeks. As a matter of comity, federal courts may not enjoin pending state criminal proceedings
8 except under extraordinary circumstances. *Younger v. Harris*, 401 U.S. 37, 49, 53 (1971). No
9 special circumstances are alleged in this case. If, on the other hand, plaintiff’s state criminal
10 proceedings have already concluded, plaintiff must direct his appeal from the judgment entered in
11 that action through the state appellate courts and ultimately the United States Supreme Court.
12 This court has no direct appeal jurisdiction to review or modify state court judgments. *See*
13 *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v.*
14 *Feldman*, 460 U.S. 462, 482 (1983). “[L]ower federal courts do not have jurisdiction to review a
15 case litigated and decided in state court; only the United States Supreme Court has jurisdiction to
16 correct state court judgments.” *Gottfried v. Medical Planning Services*, 142 F.3d 326, 330 (6th
17 Cir.), *cert. denied*, 525 U.S. 1041, 119 S.Ct. 592 (1998); *see also Bianchi v. Rylaarsdam*, 334
18 F.3d 895, 901 (9th Cir. 2003) (“Stated plainly, *Rooker—Feldman* bars any suit that seeks to
19 disrupt or ‘undo’ a prior state-court judgment, regardless of whether the state-court proceeding
20 afforded the federal-court plaintiff a full and fair opportunity to litigate her claims.”).

21 Further, if plaintiff is attempting pursue a collateral challenge to his conviction and
22 sentence through a federal habeas petition he may not do so in the context of a section 1983
23 claim. As a general rule, a challenge in federal court to the fact of conviction or the length of
24 confinement must be raised in a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.
25 *See Preiser v. Rodriguez*, 411 U.S. 475 (1973). Where success in a section 1983 action would
26 implicitly question the validity of confinement or its duration, the plaintiff must first show that
27 the underlying conviction was reversed on direct appeal, expunged by executive order, declared
28 invalid by a state tribunal, or questioned by the grant of a writ of habeas corpus. *Heck v.*

1 *Humphrey*, 512 U.S. 477, 486-87 (1994); *Muhammad v. Close*, 540 U.S. 749, 751 (2004). Thus,
2 if plaintiff is challenging the length of a sentence already imposed by the Tehama County
3 Superior Court, his success in this action would necessarily call into question the validity of that
4 sentence. Accordingly, a writ of habeas corpus would be plaintiff's sole remedy in federal court,
5 which he may pursue only after exhausting all of his constitutional claims in state court.

6 Lastly, plaintiff cannot state a claim against the "Tehama County Superior Court" because
7 it is not a "person" within the meaning of § 1983. In addition, arms of the state, such as the state
8 courts, are immune from suit under the Eleventh Amendment. *Simmons v. Sacramento County*
9 *Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003).

10 For these reasons, plaintiff's complaint must be dismissed without leave to amend. *See*
11 *Gardner v. Martino*, 563 F.3d 981, 990 (9th Cir. 2009); *Silva v. Di Vittorio*, 658 F.3d 1090, 1105
12 (9th Cir. 2011) ("Dismissal of a pro se complaint without leave to amend is proper only if it is
13 absolutely clear that the deficiencies of the complaint could not be cured by amendment."
14 (internal quotation marks omitted)); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) ("[A]
15 district court should grant leave to amend even if no request to amend the pleading was made,
16 unless it determines that the pleading could not be cured by the allegation of other facts.").

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's request to proceed in forma pauperis (ECF No. 2) is granted.
- 19 2. Plaintiff shall pay the statutory filing fee of \$350. All payments shall be collected
20 in accordance with the notice to the California Department of Corrections and
21 Rehabilitation filed concurrently herewith.
- 22 3. The complaint is dismissed without prejudice to plaintiff's proper pursuit of
23 habeas corpus relief in a new action.

24 Dated: October 4, 2017.

25 
26 EDMUND F. BRENNAN
27 UNITED STATES MAGISTRATE JUDGE
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