

1 II. Analysis

2 Petitioner raises only a single ground in his petition: that, in 2005 and in this district, he
3 settled a case for one million dollars and there is an “issue regarding settlement payment.” ECF
4 No. 1 at 4. Since he is not attacking his conviction, a habeas petition is not the appropriate
5 vehicle for this claim. *See* 28 U.S.C. § 2254(a) (“The Supreme Court, a Justice thereof, a circuit
6 judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a
7 person in custody pursuant to the judgment of a State court *only on the ground that he is in*
8 *custody in violation of the Constitution or laws or treaties of the United States.*”) (emphasis
9 added).

10 The court also declines to convert this action to a section 1983 action. First, plaintiff has
11 given no explicit indication that he would be amenable to such conversion if his habeas petition
12 were deemed improper.¹ Second, a separate section 1983 action is not the proper vehicle for
13 enforcing a settlement agreement reached in a different case.² *See, e.g., Dorrough v. Gonzalez,*
14 No. 1:08-cv-00634 AWI DLB PC, 2009 WL 3300266, 2009 U.S. Dist. LEXIS 95671, *9 (E.D.
15 Cal. Oct. 13, 2009) (“Plaintiff’s filing of a Section 1983 action is not the proper vehicle for
16 enforcement of a settlement agreement reached in a different federal case.”).

17 III. Conclusion

18 Accordingly, it is ORDERED that:

- 19 1. Petitioner’s application to proceed in forma pauperis (ECF No. 5) is GRANTED; and
20 2. The Clerk of Court shall randomly assign a United States District Judge to this case.

21 Further, it is HEREBY RECOMMENDED that the petition (ECF No. 1) be DISMISSED
22 for failure to state a cognizable federal claim.

23 These findings and recommendations are submitted to the United States District Judge
24 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
25 after being served with these findings and recommendations, any party may file written

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27 ¹ The court notes that the filing fee for a section 1983 case is far higher than the filing fee
for a habeas petition.

28 ² Petitioner has not identified the case in which the settlement was reached.

1 objections with the court and serve a copy on all parties. Such a document should be captioned
2 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
3 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
4 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In
5 his objections petitioner may address whether a certificate of appealability should issue in the
6 event he files an appeal of the judgment in this case. *See* Rule 11, Rules Governing § 2254 Cases
7 (the district court must issue or deny a certificate of appealability when it enters a final order
8 adverse to the applicant).

9 DATED: April 24, 2020.

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11 EDMUND F. BRENNAN
12 UNITED STATES MAGISTRATE JUDGE
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