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2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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6 JEFFERY E. WALKER,

No. C 13-02198 YGR (PR)

7 Plaintiff,

**ORDER OF DISMISSAL WITHOUT
PREJUDICE**

8 v.

9 KAMALA HARRIS,

10 Defendant.
_____ /

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12 This case was opened when Plaintiff, a state prisoner currently incarcerated at the California
13 Medical Facility ("CMF"), filed a complaint on the Court's civil rights form. The Clerk of the Court
14 sent him a notice that he had failed to pay the \$350.00 filing fee or apply for leave to proceed *in*
15 *forma pauperis* ("IFP"). Plaintiff thereafter filed an application to proceed IFP.

16 Although Plaintiff submitted his claims on a civil rights form, it is apparent that he intended
17 to file a petition for a writ of habeas corpus because he challenges his 1991 plea agreement in a "sex
18 offense conviction," that resulted in: (1) a requirement for him to "register as a sex offender for life;"
19 (2) placement on Megan's Law Internet web site pursuant to California Penal Code § 290; and (3)
20 the prison restricting from "custody status and jobs." (Comp. at 3.) Plaintiff claims "[t]here was no
21 such advisement [prior to the plea] making it illegal for claims 1-3 to be implemented" because the
22 aforementioned were "never agreed to." (*Id.*) As relief, Plaintiff seeks: (1) an immediate injunction
23 prohibiting continued placement on the Megan's Law Internet web site; (2) a release from the sex
24 offender registry requirement; (3) the Court to prohibit prison restrictions to his custody status and
25 job placements;¹ and (4) for his 1991 plea agreement to be "withdrawn." (*Id.*)
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28 ¹ Should Plaintiff seek to allege that some of his claims extend to the conditions of his
confinement at CMF, those claims must be brought in a separate lawsuit in the United States District
Court for the Eastern District of California, the proper venue for claims arising in Solano County, where
CMF is located. *See* 28 U.S.C. § 1391(b); 28 U.S.C. § 84(b).

1 be dismissed without prejudice to bringing it as a petition for writ of habeas corpus. *Trimble v. City*
2 *of Santa Rosa*, 49 F.3d 583, 586 (9th Cir. 1995).

3 In this case, Plaintiff's allegations attack his 1991 plea agreement rather than the conditions
4 of his confinement. When a state prisoner's § 1983 suit implicates the invalidity of his conviction
5 (which, in the instant action, resulted from an allegedly unconstitutional plea agreement), the
6 complaint must be dismissed unless the plaintiff can demonstrate that he has succeeded in getting
7 the duration of the sentence changed in another forum, for instance by succeeding with a state or
8 federal habeas petition. This Plaintiff has not done; therefore, he has failed to state a cognizable
9 claim under section 1983. Accordingly, the instant complaint is DISMISSED without prejudice.

10 **CONCLUSION**

11 Based on the foregoing, the Court concludes that Plaintiff's complaint fails to challenge the
12 conditions of his confinement. His claims implicate the invalidity of his conviction and are more
13 appropriately addressed in a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.
14 Therefore, the complaint is DISMISSED without prejudice to Plaintiff filing a habeas action.

15 Plaintiff's motion for leave to proceed *in forma pauperis* will be addressed in a separate
16 written Order.

17 The Clerk shall close the file, terminate all pending motions, and enter judgment in
18 accordance with this Order.

19 IT IS SO ORDERED.

20 DATED: October 30, 2013

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22 YVONNE GONZALEZ ROGERS
23 UNITED STATES DISTRICT COURT JUDGE
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