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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TREVILLION WARD,
Plaintiff,

v.

PEOPLE OF THE STATE OF
CALIFORNIA,
Defendant.

Case No. [23-cv-01599-JST](#)

ORDER OF DISMISSAL

Plaintiff, an inmate at Valley State Prison, filed this *pro se* action, requesting that the Court vacate a state court judgment. His complaint, ECF No. 1, is now before the Court for screening pursuant to 28 U.S.C. § 1915A. He has been granted leave to proceed *in forma pauperis* in a separate order.

DISCUSSION

A. Standard of Review

The Court screens complaints brought by persons proceeding in *pro se* and *in forma pauperis*. 28 U.S.C. § 1915(e)(2). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B)(ii). *Pro se* pleadings must, however, be liberally construed. *See United States v. Qazi*, 975 F.3d 989, 993 (9th Cir. 2020).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the statement need only “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).

1 While Rule 8 does not require detailed factual allegations, it demands more than an unadorned,
2 the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009).
3 A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a
4 cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.*

5 **B. Complaint**

6 Plaintiff requests that this Court vacate the state courts’ decisions related to his 2010
7 sentence and related restitution order. In his initial motion to vacate (ECF No. 1), Plaintiff alleges
8 that his 2010 sentence is unlawful because the related restitution order failed to consider his ability
9 to pay, in violation of California law, the state and federal constitutional prohibition on cruel and
10 unusual punishment and excessive fines, and his state and federal constitutional rights to due
11 process. Plaintiff argues that the unlawfulness of the restitution order renders his entire sentence
12 invalid. Plaintiff also alleges that the state courts erred in denying or disregarding his motions
13 regarding the invalid restitution order, i.e., when they denied his motion for modification of the
14 restitution order, failed to respond to his appeal from the judgment, and denied his motion to recall
15 the remittitur. Plaintiff also alleges that the state courts made numerous errors, clerical and
16 otherwise, when denying or disregarding his motions. Plaintiff requests that this Court “vacate
17 [the] unlawful lower court judgment.” It is unclear which lower court judgment Plaintiff refers to:
18 his 2010 sentence and related restitution order; or the July 22, 2022 state court order denying the
19 motion for modification of the restitution order; or the December 9, 2022 California Court of
20 Appeal remittitur; or the February 6, 2023 California Court of Appeal denial of his motion to
21 recall the remittitur; or all of these orders. Plaintiff also requests that the Court quash the state
22 court’s remittitur and order the state appellate court to render a decision on his motion to appeal
23 from judgment. *See generally* ECF No. 1 at 1-6, 10-22.

24 Plaintiff has since filed a separate pleading, which he identifies as an amendment to the
25 motion to vacate. ECF No. 5. According to the body of ECF No. 5, Plaintiff seeks to have ECF
26 No. 1 and ECF No. 5 considered together, as he incorporates ECF No. 1 into ECF No. 5 by
27 reference. Plaintiff may not amend a pleading piecemeal. An amended pleading completely
28 replaces prior pleadings, and renders the prior pleading without legal effect. *See, e.g., Lacey v.*

1 *Maricopa Cnty.*, 693 F.3d 896, 925 (9th Cir. 2012). ECF No. 5 therefore replaces ECF No. 1 and
2 waives all claims made in ECF No. 1 that were not repeated in ECF No. 5, which does not appear
3 to be Plaintiff’s intention. Also, ECF No. 5 fails to comply with N.D. Cal. L.R. 10-1 which
4 requires a party seeking to file an amended pleading to “reproduce the entire proposed pleading
5 [without] incorporat[ing] any part of a prior pleading by reference.” N.D. Cal. L.R. 10-1. Finally,
6 to the extent that Plaintiff seeks to file an amended complaint or motion, the Court notes that
7 amendment would be futile because, as explained in detail below, this action is barred by the
8 *Rooker-Feldman* doctrine. The proposed amendments—details regarding an allegedly fraudulent
9 appeal transcript and attorney Soglin’s alleged but false representation of Plaintiff’s appeal—do
10 not rectify the deficiencies identified below. *See Waldrip v. Hall*, 548 F.3d 729, 732 (9th Cir.
11 2008) (in reviewing whether denial or grant of leave to amend was abuse of discretion, appellate
12 court “often consider[s] . . . bad faith, undue delay, prejudice to the opposing party, futility of the
13 amendment, and whether the party has previously amended his pleadings.” (quoting *Bonin v.*
14 *Calderon*, 59 F.3d 815, 845 (9th Cir. 1995)).

15 This action is a *de facto* appeal of a state court decision and therefore barred by the
16 *Rooker-Feldman* doctrine. Under the *Rooker-Feldman* doctrine, “a state-court decision is not
17 reviewable by lower federal courts.” *Skinner v. Switzer*, 562 U.S. 521, 532 (2011). This doctrine
18 bars a federal district court from exercising subject matter jurisdiction “not only over an action
19 explicitly styled as a direct appeal, but also over the ‘de facto equivalent’ of such an appeal.”
20 *Morrison v. Peterson*, 809 F.3d 1059, 1069–70 (9th Cir. 2015) (quoting *Cooper v. Ramos*, 704
21 F.3d 772, 777 (9th Cir. 2012)). A “forbidden de facto appeal under *Rooker-Feldman*” arises
22 “when the plaintiff in federal district court complains of a legal wrong allegedly committed by the
23 state court, and seeks relief from the judgment of that court.” *Noel v. Hall*, 341 F.3d 1148, 1163
24 (9th Cir. 2003). Here, Plaintiff is arguing that the California state courts erred in denying or
25 disregarding his motions regarding the invalid restitution order (the motion for modification of the
26 restitution order, the appeal from the judgment, and the motion to recall the remittitur). In other
27 words, this action is a *de facto* appeal of the state courts’ decisions. The *Rooker-Feldman* doctrine
28 requires the Court to abstain from considering Plaintiff’s *de facto* appeals from the state court’s

1 orders. Accordingly, this action is DISMISSED with prejudice pursuant to the *Rooker-Feldman*
2 doctrine.

3 **CONCLUSION**

4 For the foregoing reason, the Court DISMISSES this action with prejudice pursuant to the
5 *Rooker-Feldman* doctrine. The Clerk shall enter judgment in favor of Defendant and against
6 Plaintiff, and close the case.

7 **IT IS SO ORDERED.**

8 Dated: May 22, 2023

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11 JON S. TIGAR
12 United States District Judge

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