



1 prisoner seeks redress from a governmental entity or officer or employee of a  
2 governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must  
3 identify any cognizable claims and dismiss any claims that are frivolous, malicious,  
4 fail to state a claim upon which relief may be granted or seek monetary relief from a  
5 defendant who is immune from such relief. See id. § 1915A(b)(1),(2). Pro se  
6 pleadings must, however, be liberally construed. See Balistreri v. Pacifica Police  
7 Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential  
9 elements: (1) that a right secured by the Constitution or laws of the United States  
10 was violated, and (2) that the alleged violation was committed by a person acting  
11 under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

12 **B. Plaintiff's Claims**

13 Plaintiff's complaint consists of a two page document containing three  
14 paragraphs. (Docket No. 1.) He claims that "[s]ince 2001... Defendants conspired  
15 to deprive plaintiff by [constitutional] violations" which resulted in physical injury,  
16 lost wages and income, physical and mental pain, and \$50,000 in medical expenses.  
17 (Docket No. 1 at 1-2.) Plaintiff also claims that he was denied equal access to  
18 "justice" and that he has been falsely imprisoned. (Id. at 2.) Plaintiff seeks damages  
19 for his injuries.

20 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain  
21 statement of the claim showing that the pleader is entitled to relief." "Specific facts  
22 are not necessary; the statement need only "give the defendant fair notice of what  
23 the . . . claim is and the grounds upon which it rests."" Erickson v. Pardus, 551  
24 U.S. 89, 93 (2007) (citations omitted). "Factual allegations must be enough to raise  
25 a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550  
26 U.S. 544, 553-56 (2007) (citations omitted). To state a claim that is plausible on its  
27 face, a plaintiff must allege facts that "allow[] the court to draw the reasonable  
28 inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal,

1 556 U.S. 662, 678 (2009) (finding under Twombly and Rule 8 of the Federal Rules  
2 of Civil Procedure, that complainant-detainee in a Bivens action failed to plead  
3 sufficient facts “plausibly showing” that top federal officials “purposely adopted a  
4 policy of classifying post-September-11 detainees as ‘of high interest’ because of  
5 their race, religion, or national origin” over more likely and non-discriminatory  
6 explanations).

7 From these decisions, the following “two principles” arise: “First to be  
8 entitled to the presumption of truth, allegations in a complaint or counterclaim may  
9 not simply recite the elements of a cause of action but must contain sufficient  
10 allegations of underlying facts to give fair notice and to enable the opposing party to  
11 defend itself effectively. Second, the factual allegations that are taken as true must  
12 plausibly suggest an entitlement to relief, such that it is not unfair to require the  
13 opposing party to be subjected to the expense of discovery and continued litigation.”  
14 Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011); see, e.g., AE v. County of  
15 Tulare, 666 F.3d 631, 637 (9th Cir. 2012) (applying Starr standard to pleading policy  
16 or custom for claims against local government entities); see also McHenry v. Renne,  
17 84 F.3d 1172, 1177-78 (9th Cir. 1996) (a complaint must make clear “who is being  
18 sued, for what relief, and on what theory, with enough detail to guide discovery”).

19 Plaintiff’s complaint fails to meet the minimum pleading requirements as it  
20 fails to give defendants fair notice of the claims against them and the grounds upon  
21 which they rest. Erickson, 551 U.S. at 93. He lists generally that the action arises  
22 under several Constitutional amendments, but fails to provide the underlying facts to  
23 support is claim, e.g., what specific federal rights were violated, when the alleged  
24 violations occurred, and how each named defendant was responsible for the  
25 violations. Plaintiff shall be granted leave to amend to attempt to cure these  
26 deficiencies.

27 In amending his complaint, Plaintiff is advised that liability may be imposed  
28 on an individual defendant under § 1983 only if Plaintiff can show that the

1 defendant proximately caused the deprivation of a federally protected right. See  
2 Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of Roseburg, 664  
3 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a constitutional right  
4 within the meaning of section 1983 if he does an affirmative act, participates in  
5 another's affirmative act or omits to perform an act which he is legally required to  
6 do, that causes the deprivation of which the plaintiff complains. See Leer, 844 F.2d  
7 at 633.

8 To the extent that Plaintiff is attempting to challenge the lawfulness of his  
9 confinement for a criminal prosecution when he claims that he was "falsely  
10 imprisoned," (Compl. at 2), his claim for damages may be barred. A claim for  
11 damages for an allegedly unconstitutional conviction or imprisonment, or for other  
12 harm caused by actions whose unlawfulness would render a conviction or sentence  
13 invalid is not cognizable under § 1983. Heck v. Humphrey, 512 U.S. 477, 487  
14 (1994).<sup>1</sup> A plaintiff must prove that the conviction or sentence has been reversed on  
15 direct appeal, expunged by executive order, declared invalid by a state tribunal  
16 authorized to make such determination, or called into question by a federal court's  
17 issuance of a writ of habeas corpus. Id. at 486-87. Accordingly, in filing an  
18 amended complaint seeking damages for an unlawful conviction, Plaintiff must  
19 identify the conviction which he is challenging and show that the challenged  
20 conviction and sentence have been invalidated.

## 22 CONCLUSION

23 For the foregoing reasons, the Court orders as follows:

24 The complaint is DISMISSED with leave to amend. Within **twenty-eight**  
25 **(28) days** of the date this order is filed, Plaintiff shall file an amended complaint.  
26 The amended complaint must include the caption and civil case number used in this

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28 <sup>1</sup>Heck applies equally to claims brought under §§ 1983, 1985 and 1986.  
McQuillion v. Schwarzenegger, 369 F.3d 1091, 1098, n. 4 (9th Cir. 2004).

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order and the words "AMENDED COMPLAINT" on the first page and write in the case number for this action, Case No. C 13-05575 EJD (PR). If using the court form complaint, Plaintiff must answer all the questions on the form in order for the action to proceed.

**Failure to respond in accordance with this order by filing an amended complaint in the time provided will result in the dismissal of this action without prejudice and without further notice to Plaintiff.**

The Clerk shall include two copies of the court's complaint with a copy of this order to Plaintiff.

DATED: 4/9/2014

  
EDWARD J. DAVILA  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

GREG LUBISCH,  
Plaintiff,

Case Number: CV13-05575 EJD

**CERTIFICATE OF SERVICE**

v.

CYNTHIA MING-MEI LEE, et al.,  
Defendants.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/10/2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Greg Lubisch J-12674079  
Hall of Justice  
850 Bryant Street, 7<sup>th</sup> Floor  
San Francisco, CA 94103

Dated: 4/10/2014

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk