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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHARLES G. REECE,  
Plaintiff,

No. CIV S-09-1350-GEB-CMK-P

vs.

ORDER

TOM L. CAREY, et al.,  
Defendants.

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Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is Plaintiff’s second amended complaint (Doc. 18).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means

1 that claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172,  
2 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the  
3 complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon which it  
4 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege  
5 with at least some degree of particularity overt acts by specific defendants which support the  
6 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
7 impossible for the court to conduct the screening required by law when the allegations are vague  
8 and conclusory.

9           Plaintiff's first two complaints were dismissed for violation of Rule 8's  
10 requirement that a complaint contain a short and plain statement of the claim. A number of other  
11 defects were addressed by the court's prior screening orders, which Plaintiff has attempted to  
12 cure in his second amended complaint. However, it is now apparent that Plaintiff's claims have a  
13 fatal flaw. Plaintiff claims his due process rights were violated during a prison disciplinary  
14 proceeding. According to his allegations, he was brought up on false charges of theft. The  
15 hearing on those false charges were then wrought with violations, including misclassification of  
16 the charges, and refusal to allow Plaintiff an investigator. He then alleges his 602 inmate  
17 grievance was illegally dismissed, the charges were wrongfully not reversed, and the forms failed  
18 to contain all necessary information. Plaintiff clarifies that due to these false charges, for which  
19 he was found guilty, he was assessed 40 hours of extra duty, docked 30 days good time, and 30  
20 days of yard and phone privileges were taken away.

21           When a state prisoner challenges the legality of his custody and the relief he seeks  
22 is a determination that he is entitled to an earlier or immediate release, such a challenge is not  
23 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ  
24 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,  
25 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.  
26 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief

1 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's  
2 underlying conviction or sentence, or the result of a prison disciplinary hearing, such a claim is  
3 not cognizable under § 1983 unless the conviction or sentence has first been invalidated on  
4 appeal, by habeas petition, or through some similar proceeding. See Edwards v. Balisok, 520  
5 U.S. 641, 646 (1987) (holding that § 1983 claim not cognizable because allegations of procedural  
6 defects and a biased hearing officer implied the invalidity of the underlying prison disciplinary  
7 sanction); Heck v. Humphrey, 512 U.S. 477, 483-84 (1994) (concluding that § 1983 not  
8 cognizable because allegations were akin to malicious prosecution action which includes as an  
9 element a finding that the criminal proceeding was concluded in plaintiff's favor); Butterfield v.  
10 Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997) (concluding that § 1983 claim not cognizable  
11 because allegations of procedural defects were an attempt to challenge substantive result in  
12 parole hearing); cf. Neal, 131 F.3d at 824 (concluding that § 1983 claim was cognizable because  
13 challenge was to conditions for parole eligibility and not to any particular parole determination).  
14 In particular, where the claim involves loss of good-time credits as a result of an adverse prison  
15 disciplinary finding, the claim is not cognizable. See Blueford v. Prunty, 108 F.3d 251, 255 (9th  
16 Cir. 1997). If a § 1983 complaint states claims which sound in habeas, the court should not  
17 convert the complaint into a habeas petition. See id.; Trimble, 49 F.3d at 586. Rather, such  
18 claims must be dismissed without prejudice and the complaint should proceed on any remaining  
19 cognizable § 1983 claims. See Balisok, 520 U.S. at 649; Heck, 512 U.S. at 487; Trimble, 49  
20 F.3d at 585.

21 Here, Plaintiff's claim involves a prison disciplinary proceeding involving the loss  
22 of good time. A determination that the proceedings were based on false charges and violated his  
23 due process rights would necessarily imply the invalidity of those proceeding which is not  
24 cognizable in a § 1983 action. Such claims sound in habeas. Prior to bringing these claims as a  
25 § 1983 action, Plaintiff is required to have the disciplinary proceeding invalidated on appeal, by  
26 habeas petition, or through some similar proceeding.

1           Because it does not appear possible that the deficiencies identified herein can be  
2 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of  
3 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

4           Based on the foregoing, the undersigned recommends that Plaintiff's complaint be  
5 dismissed without prejudice.

6           These findings and recommendations are submitted to the United States District  
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
8 after being served with these findings and recommendations, any party may file written  
9 objections with the court. Responses to objections shall be filed within 14 days after service of  
10 objections. Failure to file objections within the specified time may waive the right to appeal.  
11 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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13 DATED: July 14, 2010

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15 **CRAIG M. KELLISON**  
16 UNITED STATES MAGISTRATE JUDGE  
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