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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ROGER WAYNE ROBERTSON,

12 Plaintiff,

13 vs.

14 MARIPOSA COUNTY,

15 Defendant.
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1:13-cv-01304-GSA-PC

ORDER DISMISSING THIS ACTION
FOR FAILURE TO STATE A CLAIM
UPON WHICH RELIEF MAY BE
GRANTED UNDER SECTION 1983,
WITH LEAVE TO FILE A HABEAS
PETITION

ORDER THAT THIS DISMISSAL IS
SUBJECT TO THE "THREE-STRIKES"
PROVISION SET FORTH IN 28 U.S.C.
§ 1915(g)

ORDER FOR CLERK TO CLOSE
CASE

20 **I. BACKGROUND**

21 Roger Wayne Robertson ("Plaintiff") is a state prisoner proceeding pro se in this civil
22 action. On August 14, 2013, Plaintiff sent a letter to the Sacramento Division of the United
23 States District Court for the Eastern District of California, requesting assistance. The Clerk's
24 Office construed Plaintiff's letter as a complaint and opened the instant case as a civil rights
25 action pursuant to 42 U.S.C. § 1983. On August 19, 2013, the case was transferred to the
26 Fresno Division of United States District Court for the Eastern District of California.

27 On August 21, 2013, Plaintiff consented to the jurisdiction of a Magistrate Judge in this
28 action, and no other parties have made an appearance. (Doc. 7.) Therefore, pursuant to

1 Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall
2 conduct any and all proceedings in the case until such time as reassignment to a District Judge
3 is required. Local Rule Appendix A(k)(3).

4 On August 21, 2013, the court entered an order striking Plaintiff's letter of August 14,
5 2013 and requiring Plaintiff to file either a § 1983 civil rights complaint or a habeas corpus
6 petition. (Doc. 5.) On August 30, 2013, Plaintiff filed an Amended Complaint pursuant to §
7 1983, which is now before the court for screening. (Doc. 11.)

8 **II. SCREENING REQUIREMENT**

9 The court is required to screen complaints brought by prisoners seeking relief against a
10 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
11 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
12 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or
13 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
14 § 1915A(b)(1),(2). "Notwithstanding any filing fee, or any portion thereof, that may have been
15 paid, the court shall dismiss the case at any time if the court determines that the action or
16 appeal fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

17 A complaint, or portion thereof, should only be dismissed for failure to state a claim
18 upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set of
19 facts in support of the claim or claims that would entitle him to relief. See Hishon v. King &
20 Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957); see also
21 Palmer v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In
22 reviewing a complaint under this standard, the court must accept as true the allegations of the
23 complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976),
24 construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the
25 plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

26 **III. SUMMARY OF AMENDED COMPLAINT**

27 Plaintiff is presently incarcerated at the Sierra Conservation Center in Jamestown,
28 California. Plaintiff's amended complaint is a three-page form complaint of few words.

1 Plaintiff names one defendant, Mariposa County, and his statement of claim, in its entirety,
2 states, “All of the court documents I sent prove this a miss-trial (*sic*). (Doc. 11 at 3 ¶IV.)
3 Plaintiff requests as relief, “Look for a retrial or dismiss of all charges.” (Id. ¶V.)

4 **IV. HABEAS CORPUS**

5 When a prisoner challenges the legality or duration of his custody, or raises a
6 constitutional challenge which could entitle him to an earlier release, his sole federal remedy is
7 a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475 (1973); Young v. Kenny, 907 F.2d
8 874 (9th Cir. 1990), cert. denied 11 S.Ct. 1090 (1991). “[A] state prisoner’s § 1983 action is
9 barred (absent prior invalidation) - no matter the relief sought (damages or equitable relief), no
10 matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison
11 proceedings) - *if* success in that action would necessarily demonstrate the invalidity of
12 confinement or its duration.” Wilkinson v. Dotson, 544 U.S. 74, 81-2, 125 S.Ct. 1242, 1248
13 (2005).

14 In the Amended Complaint, Plaintiff clearly challenges his conviction and sentence. He
15 seeks as relief a retrial or dismissal of all charges. Success in this action would necessarily
16 demonstrate the invalidity of confinement or its duration. Therefore, Plaintiff’s sole federal
17 remedy is a writ of habeas corpus, and the Court shall dismiss this § 1983 action for failure to
18 state a claim, with leave to file a petition for writ of habeas corpus.

19 **V. CONCLUSION AND ORDER**

20 For the reasons set forth above, the court finds that Plaintiff fails to state any cognizable
21 claims in the Amended Complaint upon which relief may be granted under § 1983. The court
22 also finds that the deficiencies outlined above are not capable of being cured by amendment,
23 and therefore further leave to amend should not be granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Noll
24 v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). However, Plaintiff shall be granted leave
25 to file a petition for writ of habeas corpus, if he so wishes.

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1 Based on the foregoing, it is HEREBY ORDERED that:

- 2 1. This action is DISMISSED in its entirety for failure to state a claim upon which
3 relief may be granted under § 1983, with leave to file a petition for writ of
4 habeas corpus;
- 5 2. This dismissal is subject to the “three-strikes” provision set forth in 28 U.S.C. §
6 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011);
- 7 3. If Plaintiff chooses to file a petition for writ of habeas corpus, it will be a new
8 case, and Plaintiff should not refer back to this § 1983 case or case number. The
9 Clerk will assign a new case number for the petition for writ of habeas corpus;
10 and
- 11 4. The Clerk is directed to close this case.

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15 IT IS SO ORDERED.

16 Dated: September 15, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE