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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

JOSHUA LEE BYERLEY,  
  
Plaintiff,  
  
v.  
  
JEFFREY BEARD, et al.,  
  
Defendants.

Case No. 1:14-cv-00150 DLB PC  
  
ORDER DISMISSING COMPLAINT  
WITH LEAVE TO AMEND  
  
THIRTY-DAY DEADLINE

Plaintiff Joshua Lee Byerley (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February 5, 2014.<sup>1</sup> He names Secretary Jeffrey Beard, Undersecretary Martin Hoshino, Acting Secretary Diana Toche, Warden Connie Gipson, Chief Deputy Warden R. J. Rackley, Former Secretary Matthew Cate, and Parole Officer Carlton Joachim as Defendants.

**A. SCREENING REQUIREMENT**

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek

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<sup>1</sup> On February 14, 2014, Plaintiff consented to the jurisdiction of the magistrate judge pursuant to 28 U.S.C. § 636(c).

1 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
2 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
3 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
4 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

5 A complaint must contain “a short and plain statement of the claim showing that the pleader  
6 is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
7 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
8 do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly,  
9 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to  
10 ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 555). While factual  
11 allegations are accepted as true, legal conclusions are not. Id.

12 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other  
13 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092  
14 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.  
15 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or  
16 omissions of each named defendant to a violation of his rights; there is no respondeat superior  
17 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d  
18 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);  
19 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim  
20 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).  
21 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.  
22 at 678; Moss, 572 F.3d at 969.

23 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

24 Plaintiff is currently housed at California Correctional Institution in Tehachapi, California.

25 Plaintiff complains that he is falsely imprisoned beyond his date of release. He claims that  
26 he is being detained on an illegal sentence. He alleges that he was denied credits against his parole  
27 term to which he is entitled. Plaintiff alleges violations of the Eighth Amendment prohibition  
28 against cruel and unusual punishment and the Fourteenth Amendment guarantee of equal protection.

1 Plaintiff requests declaratory relief, compensatory damages in the amount of \$122,000,  
2 punitive damages in the amount of \$689,000, and a trial by jury.

3 **C. DISCUSSION**

4 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or other  
5 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092  
6 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones, 297  
7 F.3d at 934. To state a claim, Plaintiff must demonstrate a link between actions or omissions of each  
8 named defendant and the violation of his rights; there is no *respondeat superior*, or vicarious,  
9 liability under section 1983. Iqbal, 556 U.S. at 676-77, 129 S.Ct. at 1949; Lemire v. California  
10 Dep't of Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013); Simmons v. Navajo County,  
11 Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010).

12 State prisoners cannot challenge the fact or duration of their confinement in a section 1983  
13 action and their sole remedy lies in habeas corpus relief. Wilkinson v. Dotson, 544 U.S. 74, 78, 125  
14 S.Ct. 1242 (2005). Often referred to as the favorable termination rule, this exception to section  
15 1983's otherwise broad scope applies whenever state prisoners "seek to invalidate the duration of  
16 their confinement - either directly through an injunction compelling speedier release or indirectly  
17 through a judicial determination that necessarily implies the unlawfulness of the State's custody."  
18 Wilkinson, 544 U.S. at 81. Thus, "a state prisoner's [section] 1983 action is barred (absent prior  
19 invalidation) - no matter the relief sought (damages or equitable relief), no matter the target of the  
20 prisoner's suit (state conduct leading to conviction or internal prison proceedings) - if success in that  
21 action would necessarily demonstrate the invalidity of confinement or its duration." Id. at 81-2.

22 In this instance, the favorable termination rule bars any claim which, if successful, would  
23 invalidate his sentence. Although Plaintiff's claims are unclear, to the extent he is challenging the  
24 determination of his sentence, his claim is barred. Heck v. Humphrey, 512 U.S. 477, 489, 114 S.Ct.  
25 2364 (1994) (until and unless favorable termination of the conviction or sentence occurs, no cause of  
26 action under § 1983 exists).

27 **D. CONCLUSION AND ORDER**

28 Plaintiff's complaint fails to state a claim upon which relief may be granted under section

1 1983. In an abundance of caution, the Court will provide Plaintiff with an opportunity to file an  
2 amended complaint. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203  
3 F.3d 1122, 1130 (9th Cir. 2000).

4 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
5 each named Defendant did that led to the deprivation of Plaintiff's federal rights and liability may  
6 not be imposed on supervisory personnel under the theory of mere *respondeat superior*, Iqbal, 556  
7 U.S. at 676-77; Starr v. Baca, 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101  
8 (2012). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to  
9 relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations omitted).

10 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa  
11 County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be "complete in itself without  
12 reference to the prior or superceded pleading," Local Rule 220.

13 Accordingly, it is HEREBY ORDERED that:

- 14 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim  
15 under section 1983;
- 16 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 17 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
18 amended complaint; and
- 19 4. If Plaintiff fails to file an amended complaint in compliance with this order, this  
20 action will be dismissed, with prejudice, for failure to state a claim.

21  
22 IT IS SO ORDERED.

23 Dated: February 22, 2015

24 /s/ Dennis L. Beck  
25 UNITED STATES MAGISTRATE JUDGE  
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