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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID L. ESPINOZA,
Plaintiff,
v.
P. SALDIVAR, et al.,
Defendants.

Case No. 1:15-cv-00812 DAD DLB PC
ORDER VACATING FINDINGS AND
RECOMMENDATION REGARDING
DISMISSAL OF COMPLAINT WITHOUT
LEAVE TO AMEND
ORDER DIRECTING PLAINTIFF TO FILE
FIRST AMENDED COMPLAINT
[THIRTY DAY DEADLINE]

Plaintiff David L. Espinoza, a former state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 29, 2015. On April 20, 2016, the Court screened the complaint and determined that Plaintiff had failed to state a claim. The Court issued Findings and Recommendations that the complaint be dismissed without leave to amend because it was clear based on the factual allegations in the complaint that Plaintiff was not entitled to relief under § 1983.

On May 19, 2016, Plaintiff filed objections to the Findings and Recommendation. Plaintiff contends that he is solely alleging civil rights violations, and is not seeking habeas corpus relief. As discussed in the Findings and Recommendation, the complaint was vague and brief. To the extent that Plaintiff's arguments could be discerned, it appeared that he was challenging the calculation of his sentence. Regardless of whether he was seeking only monetary damages, success in this case would necessarily impact his sentence. Therefore, it was clear that Plaintiff's

1 remedy lay in habeas. Preiser v. Rodriguez, 411 U.S. 475, 499 (1973); Badea v. Cox, 931 F.2d
2 573, 574 (9th Cir. 1991).

3 In his objections, Plaintiff states that he has now been released from the correctional
4 facility. That being the case, Plaintiff is correct that his situation is now similar to the plaintiff's in
5 Badea, 931 F.2d 573. Since Plaintiff has been released, resolution of the claims in this case would
6 not affect the duration of his sentence. Id. at 574. In addition, since any challenge to the duration
7 of his sentence is now moot, Plaintiff would not be able to seek habeas relief. Id. Therefore, his
8 challenge to the determination of his eligibility for parole may properly be considered in a civil
9 rights action.

10 Accordingly, IT IS HEREBY ORDERED that the Findings and Recommendation issued
11 on April 20, 2016, is VACATED. Plaintiff is DIRECTED to file a First Amended Complaint
12 within thirty (30) days of the date of service of this order. Plaintiff is advised that failure to
13 comply with this or any other court order may be grounds for imposition of sanctions, including
14 dismissal of the case.

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16 IT IS SO ORDERED.

17 Dated: May 24, 2016

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE

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