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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RONALD FOSTER,

 Plaintiff,

 v.

L. CARROL, et al.,

 Defendants.

Case No. 1:19-cv-01474-SAB (PC)

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSING
COMPLAINT AS NOT COGNIZABLE
UNDER SECTION 1983

ORDER DIRECTING CLERK OF THE
COURT TO RANDOMLY ASSIGN
DISTRICT JUDGE

(ECF No. 1)

OBJECTIONS DUE WITHIN THIRTY
DAYS

Ronald Foster (“Plaintiff”), a state prisoner, is appearing *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff’s complaint, filed on October 17, 2019.

I.
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 on which relief may be granted,” or

1 that “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
2 1915(e)(2)(B).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate
8 that each defendant personally participated in the deprivation of Plaintiff’s rights. Jones v.
9 Williams, 297 F.3d 930, 934 (9th Cir. 2002).

10 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings
11 liberally construed and to have any doubt resolved in their favor. Wilhelm v. Rotman, 680 F.3d
12 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff’s claims must be
13 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
14 that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at 678-79; Moss
15 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a defendant
16 has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a defendant’s
17 liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572
18 F.3d at 969.

19 II.

20 COMPLAINT ALLEGATIONS

21 The Court accepts Plaintiff’s allegations in the complaint as true only for the purpose of
22 the *sua sponte* screening requirement under 28 U.S.C. § 1915.

23 Plaintiff is in the custody of the California Department of Corrections and Rehabilitation
24 and is housed at California State Prison, Corcoran. Plaintiff brings this action against
25 Defendants L. Carrol, S. Babb, J. Ceballos, C. Brown, M Kimbrell, and K. Field alleging
26 violation of his due process rights under the Fifth and Fourteenth Amendments.

27 Plaintiff is a participant in the MHSDS at the enhanced outpatient level of care. Due to
28 this classification, Plaintiff is qualified for assignment to work group M and minimum custody

1 credits as well as other credits. Defendants Carrol and Babb refused to follow the mandatory
2 language of Title 15 by refusing to properly classify Plaintiff and award him good time credits.
3 Plaintiff filed an inmate grievance that was denied by Defendants Ceballos, Brown, Kimbrell,
4 and Field. The appeal was denied incorrectly stating that Level VI inmates do not qualify for
5 work group M. Plaintiff contends that Title 15 clearly states that enhanced outpatient inmates
6 are qualified for work group M and that he should have been released from custody ten days
7 after being so designated. He is seeking monetary damages.

8 III.

9 DISCUSSION

10 It has long been established that state prisoners cannot challenge the fact or duration of
11 their confinement in a section 1983 action and their sole remedy lies in habeas corpus relief.
12 Wilkinson v. Dotson, 544 U.S. 74, 78 (2005). Often referred to as the favorable termination rule
13 or the Heck bar, this exception to section 1983's otherwise broad scope applies whenever state
14 prisoners "seek to invalidate the duration of their confinement-either directly through an
15 injunction compelling speedier release or indirectly through a judicial determination that
16 necessarily implies the unlawfulness of the State's custody." Wilkinson, 544 U.S. at 81; Heck v.
17 Humphrey, 512 U.S. 477, 482, 486-487 (1994); Edwards v. Balisok, 520 U.S. 641, 644 (1997).
18 Thus, "a state prisoner's [section] 1983 action is barred (absent prior invalidation)-no matter the
19 relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state
20 conduct leading to conviction or internal prison proceedings)-if success in that action would
21 necessarily demonstrate the invalidity of confinement or its duration." Wilkinson, 544 U.S. at
22 81-82.

23 The gravamen of Plaintiff's complaint is that he is entitled to receive time credits which
24 he is not receiving and, had he received such credits, he should have been released from custody.
25 Plaintiff success in this action would necessarily imply the invalidity of his deprivation of time
26 credits. Edwards, 520 U.S. at 646. Even though Plaintiff is seeking damages in this action, if he
27 were to obtain a judgment in his favor it would affect the length of his sentence. Plaintiff cannot
28 seek damages for the unconstitutional deprivation of time credits in this action because if he

1 were to prevail it would imply the invalidity of his sentence. Nonnette v. Small, 316 F.3d 872,
2 875 (9th Cir. 2002). Therefore, Plaintiff's sole remedy for the denial of time credits is in habeas
3 corpus and not under section 1983. Nonnette, 316 F.3d at 875. The Court finds that Plaintiff's
4 complaint is not cognizable under section 1983. Edwards, 520 U.S. at 648. Therefore, it is
5 recommended that Plaintiff's complaint be dismissed and this action be closed.

6 **IV.**

7 **CONCLUSION AND RECOMMENDATIONS**

8 For the reasons discussed, Plaintiff's sole remedy for the claims raised in this action is in
9 habeas corpus. Accordingly, IT IS HEREBY RECOMMENDED that Plaintiff's complaint be
10 DISMISSED as not cognizable under section 1983, and this action be closed.

11 The Clerk of the Court is HEREBY DIRECTED to randomly assign a district judge to his
12 matter.

13 This findings and recommendations is submitted to the district judge assigned to this
14 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within **thirty (30)**
15 days of service of this recommendation, Plaintiff may file written objections to this findings and
16 recommendations with the court. Such a document should be captioned "Objections to
17 Magistrate Judge's Findings and Recommendations." The district judge will review the
18 magistrate judge's findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)(C).
19 Plaintiff is advised that failure to file objections within the specified time may result in the
20 waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing
21 Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22 IT IS SO ORDERED.

23 Dated: October 23, 2019

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25 _____
26 UNITED STATES MAGISTRATE JUDGE
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