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

LARRY GIBSON,

No. CIV S-11-1919-GEB-CMK-P

Petitioner,

vs.

FINDINGS AND RECOMMENDATIONS

JAMES HEARTLY,

Respondent.

_____ /

Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s petition for a writ of habeas corpus (Doc. 1).

Rule 4 of the Federal Rules Governing Section 2254 Cases provides for summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in the district court.” In the instant case, it is plain that petitioner is not entitled to federal habeas relief because he is challenging the conditions of his confinement and not the fact or duration of his conviction or sentence. Where a prisoner challenges the conditions of confinement, as opposed to the fact or duration of confinement, his remedy lies in a civil rights action under 42 U.S.C. § 1983. See

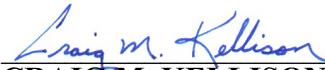
1 Rizzo v. Dawson, 778 F.2d 527, 531-32 (9th Cir. 1985).

2 Based on the foregoing, the undersigned recommends that petitioner's petition for
3 a writ of habeas corpus (Doc. 1) be summarily dismissed.

4 These findings and recommendations are submitted to the United States District
5 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court. Responses to objections shall be filed within 14 days after service of
8 objections. Failure to file objections within the specified time may waive the right to appeal.

9 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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11 DATED: November 14, 2011

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13 **CRAIG M. KELLISON**
14 UNITED STATES MAGISTRATE JUDGE
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