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

JOHN MARVIN BALLARD,

No. 2:12-cv-2226-CMK-P

Plaintiff,

vs.

ORDER

SAMUEL WONG, et al.,

Defendants.

_____ /

Plaintiff, a civil detainee, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court is also required to screen complaints brought by litigants who have been granted leave to proceed in forma pauperis. See 28 U.S.C. § 1915(e)(2). Under these screening provisions, the court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §§ 1915(e)(2)(A), (B) and 1915A(b)(1), (2). The Federal Rules of Civil Procedure require that complaints contain a “short

1 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
2 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v.
3 Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are
4 satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds
5 upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff
6 must allege with at least some degree of particularity overt acts by specific defendants which
7 support the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it
8 is impossible for the court to conduct the screening required by law when the allegations are
9 vague and conclusory. Moreover, pursuant to Federal Rule of Civil Procedure 12(h)(3), this court
10 must dismiss an action if the court determines that it lacks subject matter jurisdiction. Because
11 plaintiff, who states he is not a prisoner but a civil detainee, has been granted leave to proceed in
12 forma pauperis, the court will screen the complaint pursuant to § 1915(e)(2).

13 **I. PLAINTIFF’S ALLEGATIONS**

14 Plaintiff’s allegations are vague and difficult to decipher. It appears that he is
15 claiming defendant Wong, who is stated to be an Assistant United States Attorney, is disclosing
16 plaintiff’s personal information to a court in North Carolina. Plaintiff does not explain why the
17 court in North Carolina is requesting such information, or why sharing the information with the
18 Court is a violation of his Constitutional rights, but it appears to be in reference to some
19 proceeding in that Court. Plaintiff also indicates the information defendant Wong is providing
20 that Court is false. Plaintiff further states defendant Wong is guilty of prosecutorial misconduct.

21 **II. DISCUSSION**

22 Section 1983 imposes liability upon any person who, acting under color of state
23 law, deprives another of a federally protected right. 42 U.S.C. § 1983 (1982). “To make out a
24 cause of action under section 1983, plaintiffs must plead that (1) the defendants acting under
25 color of state law (2) deprived plaintiffs of rights secured by the Constitution or federal statutes.”
26 Gibson v. United States, 781 F.2d 1334, 1338 (9th Cir.1986).

1 When a state prisoner challenges the legality of his custody and the relief he seeks
2 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
3 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
4 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
5 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
6 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
7 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's
8 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in
9 imposition of a sanction affecting the overall length of confinement, such a claim is not
10 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal,
11 by habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477,
12 483-84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to
13 malicious prosecution action which includes as an element a finding that the criminal proceeding
14 was concluded in plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997)
15 (concluding that § 1983 claim not cognizable because allegations of procedural defects were an
16 attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding
17 that § 1983 claim was cognizable because challenge was to conditions for parole eligibility and
18 not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74 (2005)
19 (concluding that § 1983 action seeking changes in procedures for determining when an inmate is
20 eligible for parole consideration not barred because changed procedures would hasten future
21 parole consideration and not affect any earlier parole determination under the prior procedures).

22 If a § 1983 complaint states claims which sound in habeas, the court should not
23 convert the complaint into a habeas petition. See id.; Trimble, 49 F.3d at 586. Rather, such
24 claims must be dismissed without prejudice and the complaint should proceed on any remaining
25 cognizable § 1983 claims. See Balisok, 520 U.S. at 649; Heck, 512 U.S. at 487; Trimble, 49
26 F.3d at 585.

1 Here, plaintiff's claims are too vague for the court to determine whether or not
2 plaintiff states a claim under § 1983. It appears that plaintiff is upset about having his
3 psychological evaluations shared with the Court in North Carolina. As plaintiff is a civil
4 detainee, the undersigned assumes that the psychological evaluations are being utilized in
5 determining whether or not plaintiff is to be released or continued to be held as a civil detainee.
6 As such, it would appear that plaintiff's claims would sound in habeas to the extent the claims
7 are related to his continued detention. To the extent plaintiff is actually attempting to state a
8 claim under § 1983, the only claims the undersigned can decipher from his complaint are state
9 law claims, such as prosecutorial misconduct, which are not cognizable in a § 1983 action.

10 III. CONCLUSION

11 As plaintiff's claims are unclear, he will be provided an opportunity to clarify his
12 claims. Plaintiff is cautioned, however, that an action under § 1983 is a challenge to the
13 conditions of his confinement and his treatment therein. Any challenge to the terms of his
14 detention, including an extension thereto, would sound in habeas and would not be cognizable in
15 this action.

16 Because it is possible that the deficiencies identified in this order may be cured by
17 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire
18 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
19 informed that, as a general rule, an amended complaint supersedes the original complaint. See
20 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
21 amend, all claims alleged in the original complaint which are not alleged in the amended
22 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
23 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make
24 plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be
25 complete in itself without reference to any prior pleading. See id.

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1 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
2 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
3 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
4 each named defendant is involved, and must set forth some affirmative link or connection
5 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
6 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

7 Finally, plaintiff is warned that failure to file an amended complaint within the
8 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
9 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
10 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
11 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. Plaintiff's complaint is dismissed with leave to amend; and
- 14 2. Plaintiff shall file an amended complaint within 30 days of the date of
15 service of this order.

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17 DATED: May 29, 2014

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19 **CRAIG M. KELLISON**
20 UNITED STATES MAGISTRATE JUDGE
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