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

CHARLES D. VILLACRES,

No. 2:13-cv-1112-LKK-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

CALIFORNIA DEPARTMENT OF
CORRECTIONS & REHABILITATION, et al.

Defendants.

_____/

Plaintiff, a prisoner proceeding pro se, 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 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. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
4 allege with at least some degree of particularity overt acts by specific defendants which support
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
6 impossible for the court to conduct the screening required by law when the allegations are vague
7 and conclusory.

8 **I. PLAINTIFF'S ALLEGATIONS**

9 In his complaint, plaintiff claims he was egregiously denied a parole date by the
10 defendants, in violation of his due process rights. He states that there is no evidence that
11 provides a viable reason to deny him parole. The relief he is requesting is an immediate parole
12 release date as well as damages.

13 **II. DISCUSSION**

14 When a state prisoner challenges the legality of his custody and the relief he seeks
15 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
16 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
17 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
18 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
19 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
20 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's
21 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in
22 imposition of a sanction affecting the overall length of confinement, such a claim is not
23 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal,
24 by habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477,
25 483-84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to
26 malicious prosecution action which includes as an element a finding that the criminal proceeding

1 objections with the court. Responses to objections shall be filed within 14 days after service of
2 objections. Failure to file objections within the specified time may waive the right to appeal.
3 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 DATED: December 30, 2013

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7 **CRAIG M. KELLISON**
8 UNITED STATES MAGISTRATE JUDGE
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