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

TODD CHRISTIAN ROBBEN,  
Plaintiff,  
v.  
EL DORADO COUNTY, et al.,  
Defendants.

No. 2:16-CV-2698-JAM-DMC-P

ORDER

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, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it

1 rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must allege  
2 with at least some degree of particularity overt acts by specific defendants which support the  
3 claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
4 impossible for the court to conduct the screening required by law when the allegations are vague  
5 and conclusory.

## 6 7 **I. PLAINTIFF'S ALLEGATIONS**

8 Plaintiff names the following as defendants: (1) Vern Pierson, the District  
9 Attorney for El Dorado County; (2) Dale Gomes; (3) Mike Pizzuti; and (4) the El Dorado County  
10 District Attorney's Office. Plaintiff claims defendant Pierson abused his office to carry out a  
11 personal vendetta by using false evidence and testimony to initiate two criminal cases against  
12 him. See Doc. 1, p. 3 (plaintiff's complaint). According to plaintiff, he has filed "an appeal and  
13 petition for habeas corpus to reverse the convictions." Id. Plaintiff does not state the outcomes of  
14 those cases.

## 15 16 **II. DISCUSSION**

17 When a state prisoner challenges the legality of his custody and the relief he seeks  
18 is a determination that he is entitled to an earlier or immediate release, such a challenge is not  
19 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ  
20 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,  
21 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.  
22 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief  
23 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's  
24 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in  
25 imposition of a sanction affecting the overall length of confinement, such a claim is not  
26 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal, by  
27 habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477, 483-  
28 84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to

1 malicious prosecution action which includes as an element a finding that the criminal proceeding  
2 was concluded in plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997)  
3 (concluding that § 1983 claim not cognizable because allegations of procedural defects were an  
4 attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding  
5 that § 1983 claim was cognizable because challenge was to conditions for parole eligibility and  
6 not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74 (2005)  
7 (concluding that § 1983 action seeking changes in procedures for determining when an inmate is  
8 eligible for parole consideration not barred because changed procedures would hasten future  
9 parole consideration and not affect any earlier parole determination under the prior procedures).

10 To the extent plaintiff alleges misconduct on the part of defendants that resulted in  
11 criminal convictions, success on the merits of the instant civil rights action would necessarily  
12 imply the invalidity of one or both of those convictions. While plaintiff states that he has filed an  
13 appeal and habeas corpus action concerning the convictions, he does not state that the convictions  
14 were set aside or otherwise invalidated such that this action can proceed. To the extent those  
15 actions are still pending or were not resolved in plaintiff's favor, the current civil action would be  
16 barred. To the extent plaintiff's conviction has been overturned on appeal or collateral review,  
17 this civil action may be able to proceed. Plaintiff will be provided an opportunity to amend the  
18 complaint to allege additional facts relating to the appeal and habeas action.

### 19 20 **III. CONCLUSION**

21 Because it is possible that the deficiencies identified in this order may be cured by  
22 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire  
23 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
24 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
25 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
26 amend, all claims alleged in the original complaint which are not alleged in the amended  
27 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if  
28 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make

1 plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be  
2 complete in itself without reference to any prior pleading. See id.

3 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
4 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See  
5 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
6 each named defendant is involved, and must set forth some affirmative link or connection  
7 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
8 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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

14 Accordingly, IT IS HEREBY ORDERED that:

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

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20 Dated: November 1, 2018



21 DENNIS M. COTA  
22 UNITED STATES MAGISTRATE JUDGE