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

THOMAS JOSEPH MELGER,

No. 2:17-CV-0224-JAM-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

MARSHALL HOPPER, 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.

9 I. PLAINTIFF'S ALLEGATIONS

10 In this case, plaintiff names the following as defendants: (1) Marshall Hopper, the
11 Director of the Placer County Probation Department; and (2) Scott Owens, the Placer County
12 District Attorney. Plaintiff claims that defendant Hopper filed documents containing false
13 information and that, based on these documents, defendant Owens initiated a criminal
14 prosecution against him. Plaintiff does not indicate whether the criminal prosecution against him
15 is ongoing or has been concluded and, if concluded, what the result was.

17 II. DISCUSSION

18 The court finds that the complaint is defective for either one of two reasons. As
19 discussed in more detail below, if the criminal prosecution is ongoing, the court must abstain
20 from hearing the case pending resolution of those proceedings. If the criminal prosecution is
21 concluded, then plaintiff's claim is not cognizable.

22 Younger abstention bars the federal court from hearing a civil rights claim arising
23 from an ongoing criminal prosecution. See Younger v. Harris, 401 U.S. 37 (1971). Here, to the
24 extent the criminal prosecution against plaintiff is ongoing, this court must abstain from hearing
25 the matter.

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

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1 **III. CONCLUSION**

2 Because it does not appear possible that the deficiencies identified herein can be
3 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
4 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

5 Based on the foregoing, the undersigned recommends that this action be
6 dismissed.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court. Responses to objections shall be filed within 14 days after service of
11 objections. Failure to file objections within the specified time may waive the right to appeal.
12 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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14 DATED: August 7, 2018

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16 **CRAIG M. KELLISON**
17 UNITED STATES MAGISTRATE JUDGE
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