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

RICHARD ANTHONY EVANS,

No. 2:17-CV-1889-CMK-P

Plaintiff,

vs.

ORDER

SUISUN POLICE DEPARTMENT,
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).

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

9 Plaintiff names the Suisun Police Department and officers Carlock, Brown, and
10 Hamilton as defendants. Plaintiff claims:

11 Lisa Carlock, Stephen Brown, and Bryan Hamilton concealed,
12 misrepresented, and falsified evidence as testifying officers at my
13 preliminary hearing of 7/26/16. Their acts effected my hearing and bound
me over for trial, when the proper and accurate evidence would have
dismissed the case at the prelim. stage. Case 319582.

14 A review of Solano County Superior Court records indicates that plaintiff was convicted of a
15 felony in People v. Evans, Case No. FCR319582, on April 10, 2017.¹

16 When a state prisoner challenges the legality of his custody and the relief he seeks
17 is a determination that he is entitled to an earlier or immediate release, such a challenge is not
18 cognizable under 42 U.S.C. § 1983 and the prisoner's sole federal remedy is a petition for a writ
19 of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda,
20 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir.
21 1995) (per curiam). Thus, where a § 1983 action seeking monetary damages or declaratory relief
22 alleges constitutional violations which would necessarily imply the invalidity of the prisoner's
23

24 ¹ The court may take judicial notice pursuant to Federal Rule of Evidence 201 of
25 matters of public record. See U.S. v. 14.02 Acres of Land, 530 F.3d 883, 894 (9th Cir. 2008).
26 Thus, this court may take judicial notice of state court records, see Kasey v. Molybdenum Corp.
of America, 336 F.2d 560, 563 (9th Cir. 1964), as well as its own records, see Chandler v. U.S.,
378 F.2d 906, 909 (9th Cir. 1967).

1 underlying conviction or sentence, or the result of a prison disciplinary hearing resulting in
2 imposition of a sanction affecting the overall length of confinement, such a claim is not
3 cognizable under § 1983 unless the conviction or sentence has first been invalidated on appeal,
4 by habeas petition, or through some similar proceeding. See Heck v. Humphrey, 512 U.S. 477,
5 483-84 (1994) (concluding that § 1983 claim not cognizable because allegations were akin to
6 malicious prosecution action which includes as an element a finding that the criminal proceeding
7 was concluded in plaintiff's favor); Butterfield v. Bail, 120 F.3d 1023, 1024-25 (9th Cir. 1997)
8 (concluding that § 1983 claim not cognizable because allegations of procedural defects were an
9 attempt to challenge substantive result in parole hearing); cf. Neal, 131 F.3d at 824 (concluding
10 that § 1983 claim was cognizable because challenge was to conditions for parole eligibility and
11 not to any particular parole determination); cf. Wilkinson v. Dotson, 544 U.S. 74 (2005)
12 (concluding that § 1983 action seeking changes in procedures for determining when an inmate is
13 eligible for parole consideration not barred because changed procedures would hasten future
14 parole consideration and not affect any earlier parole determination under the prior procedures).
15 If a § 1983 complaint states claims which sound in habeas, the court should not convert the
16 complaint into a habeas petition. See id.; Trimble, 49 F.3d at 586. Rather, such claims must be
17 dismissed without prejudice and the complaint should proceed on any remaining cognizable
18 § 1983 claims. See Balisok, 520 U.S. at 649; Heck, 512 U.S. at 487; Trimble, 49 F.3d at 585.

19 Plaintiff alleges that his criminal case would have been dismissed at the
20 preliminary hearing but for the defendants' actions. Thus, success on his claim necessarily
21 implies the invalidity of his criminal conviction. Given that there is no indication that plaintiff's
22 conviction has been invalidated or set aside, the claim is not cognizable.

23 Because it does not appear possible that the deficiencies identified herein can be
24 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to dismissal of
25 the entire action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).
26 Plaintiff shall show cause in writing, within 30 days of the date of this order, why this action

1 should not be dismissed for failure to state a claim. Plaintiff is warned that failure to respond to
2 this order may result in dismissal of the action for the reasons outlined above, as well as for
3 failure to prosecute and comply with court rules and orders. See Local Rule 110.

4 IT IS SO ORDERED.

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6 DATED: October 11, 2017

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