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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGER WAYNE ROBERTSON,  
Plaintiff,  
v.  
CALIFORNIA HEALTH CARE  
FACILITY, et al.,  
Defendants.

No. 2:18-cv-00647 JAM CKD P

ORDER AND  
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On September 12, 2018, the court recommended that this action be dismissed for plaintiff’s failure to file an amended complaint. As plaintiff has now filed an amended complaint, that recommendation will be vacated.

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th

1 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
2 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
3 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
4 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
5 Cir. 1989); Franklin, 745 F.2d at 1227.

6 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
7 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
8 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
9 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
10 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
11 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
12 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
13 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
14 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
15 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and  
16 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
17 U.S. 232, 236 (1974).

18 The court has reviewed plaintiff’s amended complaint. Essentially, plaintiff seeks release  
19 from prison. However, when a state prisoner challenges the legality of his custody and the relief  
20 he seeks is the determination of his entitlement to an earlier or immediate release, his sole federal  
21 remedy is a writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973). Accordingly,  
22 this 42 U.S.C. § 1983 action must be dismissed.

23 In accordance with the above, IT IS HEREBY ORDERED that the court’s September 12,  
24 2018 findings and recommendations are vacated; and

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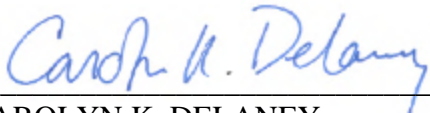
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IT IS HEREBY RECOMMENDED that:

1. Plaintiff’s amended complaint be dismissed for failure to state a claim upon which relief can be granted; and
2. This case be closed.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen after being served with these findings and recommendations, plaintiff may file written objections with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time waives the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: March 18, 2019

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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