

1 se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
2 (9th Cir. 1990).

3 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
4 claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the
5 statement need only "give the defendant fair notice of what the . . . claim is and the grounds
6 upon which it rests."" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted).
7 Although in order to state a claim a complaint "does not need detailed factual allegations, . . . a
8 plaintiff's obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than
9 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
10 do. . . . Factual allegations must be enough to raise a right to relief above the speculative
11 level." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A
12 complaint must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.*
13 at 1974.

14 To state a claim under 42 U.S.C. 1983, a plaintiff must allege two essential elements:
15 (1) that a right secured by the Constitution or laws of the United States was violated, and (2)
16 that the alleged deprivation was committed by a person acting under the color of state law.
17 *West v. Atkins*, 487 U.S. 42, 48 (1988).

18 **B. LEGAL CLAIMS**

19 Plaintiff claims that defendants violated his right to due process by "willfully and
20 intentionally" issuing an "unwarranted" disciplinary report against him and, based on such a
21 report, depriving him of good time credits and television for ninety days. If the discipline was
22 unwarranted because plaintiff was innocent of the charge, this does not raise a due process issue
23 because the Constitution demands due process, not error-free decision-making. *See Ricker v.*
24 *Leapley*, 25 F.3d 1406, 1410 (8th Cir. 1994); *McCrae v. Hankins*, 720 F.2d 863, 868 (5th Cir.
25 1983). The loss of television privileges also does not implicate a prisoner's right to due process
26 because it is not a sufficiently severe hardship. *See Sandin v. Conner*, 515 U.S. 472, 477-87
27 (1995). While the loss of time credits may implicate the right to due process, in federal court
28 such a claim may not be brought in a civil complaint, such as the one filed here, but rather must

1 be raised in a federal habeas corpus petition because a time credit claim affects the legality or
2 duration of a prisoner's custody and a determination of which may likely result in entitlement to
3 an earlier release. See *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997); *Young v. Kenny*,
4 907 F.2d 874, 876-78 (9th Cir. 1990); *Bostic v. Carlson*, 884 F.2d 1267, 1269 (9th Cir. 1989).
5 Consequently, plaintiff's claims will be dismissed for failure to state a cognizable claim for
6 relief. The dismissal is without prejudice to plaintiff raising his due process challenge to the
7 loss of time credits in a federal habeas corpus petition. Petitioner may also bring any
8 cognizable claims under state law in state court, but he is cautioned that if he includes any
9 claims for the violation of his federal constitutional rights or other federal law in his state court
10 complaint, defendants may remove the action to federal court, as they did here.

11 **CONCLUSION**

12 This case is **DISMISSED** without prejudice.

13 The clerk shall enter judgment and close the file.

14 **IT IS SO ORDERED.**

15 Dated: July 24, 2013.

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18 WILLIAM ALSUP
19 UNITED STATES DISTRICT JUDGE
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