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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SCOTT CHARLES SUTTIE,
Plaintiff,
v.
SANTA CLARA COUNTY
DEPARTMENT OF CORRECTIONS,
Defendant.

Case No. [17-cv-03738-JSC](#)

**ORDER OF DISMISSAL;
INSTRUCTIONS TO CLERK**

INTRODUCTION

Plaintiff, an inmate at the Santa Clara County Jail, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against the Santa Clara County Department of Corrections.¹ Plaintiff’s application to proceed *in forma pauperis* is granted in a separate order. For the reasons explained below, the complaint is dismissed without prejudice.

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the

¹ Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 3.)

1 claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the
2 statement need only give the defendant fair notice of what the . . . claim is and the grounds upon
3 which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although to state
4 a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to
5 provide the grounds of his entitle[ment] to relief requires more than labels and conclusions, and a
6 formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must
7 be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*,
8 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a
9 claim for relief that is plausible on its face.” *Id.* at 570.

10 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a
11 right secured by the Constitution or laws of the United States was violated, and (2) that the alleged
12 violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S.
13 42, 48 (1988).

14 LEGAL CLAIMS

15 Plaintiff states that he has been convicted and sentenced, and he is in the custody of
16 Defendant, the Santa Clara Department of Corrections. He alleges that Defendant is depriving
17 him of the time credits to which he is entitled under California Penal Code § 4019, and
18 consequently has set an inaccurate date for his release. He seeks to have Defendant change his
19 release date to accurately reflect his time credits.

20 “Federal law opens two main avenues to relief on complaints related to imprisonment: a
21 petition for habeas corpus, 28 U.S.C. § 2254, and a complaint under the Civil Rights Act of 1871,
22 Rev. Stat. § 1979, as amended, 42 U.S.C. § 1983. Challenges to the lawfulness of confinement or
23 to particulars affecting its duration are the province of habeas corpus.” *Hill v. McDonough*, 547
24 U.S. 573, 579 (2006) (quoting *Muhammad v. Close*, 540 U.S. 749, 750 (2004)). “An inmate’s
25 challenge to the circumstances of his confinement, however, may be brought under § 1983.” *Id.*
26 Habeas is the “exclusive remedy” for the prisoner who seeks “‘immediate or speedier release’”
27 from confinement. *Skinner v. Switzer*, 561 U.S. 521, 525 (2011) (quoting *Wilkinson v. Dotson*,
28 544 U.S. 74, 82 (2005)). This includes inmates who are seeking reinstatement of time credits to
the extent that such reinstatement would “necessarily spell speedier release.” *Skinner*, 561 U.S. at
525. Plaintiff seeks reinstatement of time credits to which he claims to be entitled under state law,
and to advance his release date. To obtain that remedy in federal court, he must file a petition for
a petition for a writ of habeas corpus, not a civil rights complaint. Accordingly, Plaintiff’s
complaint is dismissed without prejudice to bringing his claims in a federal habeas petition. *See*
Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (civil rights complaint seeking
habeas relief should be dismissed without prejudice to bringing as petition for writ of habeas
corpus).

CONCLUSION

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For the foregoing reasons, the complaint is DISMISSED without prejudice to bringing it as a petition for a writ of habeas corpus.

The Clerk shall enter judgment and close the file, and send Plaintiff this Court's form habeas petition and in forma pauperis application, instructions for completing the forms, and postage-paid return envelopes.

IT IS SO ORDERED.

Dated: July 24, 2017


JACQUELINE SCOTT CORLEY
United States Magistrate Judge

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SCOTT CHARLES SUTTIE,
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CERTIFICATE OF SERVICE

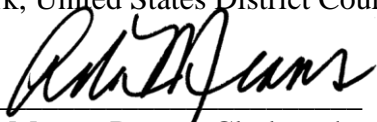
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on July 24, 2017, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Scott Charles Suttie ID: BVI-679
Elmwood Complex
701 S. Abel Street
Milpitas, CA 95035

Dated: July 24, 2017

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY