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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CEDRIC CHESTER JOHNSON,

Plaintiff,

v.

S. HATTON, et al.,

Defendants.

Case No. 16-06665 EJD (PR)

ORDER OF DISMISSAL

Plaintiff, a state prisoner at the Correctional Training Facility (“CTF”) in Soledad, filed the instant pro se civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s motion for leave to proceed in forma pauperis will be granted in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune

1 from such relief. See id. § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
2 construed. See Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir. 1988).

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

7 **B. Plaintiff’s Claims**

8 Plaintiff claims that CTF prison officials are not properly calculating his time
9 credits and are “holding me in prison well past my EPRD (Earliest Possible Release
10 Date).” (Compl. at 3.) According to the attached supplemental material, Plaintiff asserts
11 that CTF is denying “2 for 1 credit,” resulting in a lengthier sentence. (Compl. Ex. A at 1.)

12 If a state prisoner’s time credits have been improperly computed, he may have a
13 claim for denial of due process, see Haygood v. Younger, 769 F.2d 1350, 1355-58 (9th
14 Cir. 1985) (en banc), cert. denied, 478 U.S. 1020 (1986), which generally may only be
15 remedied by way of a petition for a writ of habeas corpus, see Young v. Kenny, 907 F.2d
16 874, 876-78 (9th Cir. 1990), cert. denied, 498 U.S. 1126 (1991); accord Toussaint v.
17 McCarthy, 801 F.2d 1080, 1096 n.14 (9th Cir. 1986), cert. denied, 481 U.S. 1069 (1987).

18 Here, Plaintiff is alleging that his time credits are not being properly calculated.

19 Accordingly, this action should be brought as a petition for a writ of habeas corpus rather
20 than a § 1983 action. Id.

21 Furthermore, although a district court may construe a habeas petition by a prisoner
22 attacking the conditions of his confinement as a civil rights action under 42 U.S.C. § 1983,
23 see Wilwording v. Swenson, 404 U.S. 249, 251 (1971), the opposite is not true: A civil
24 rights complaint seeking habeas relief should be dismissed without prejudice to bringing it
25 as a petition for writ of habeas corpus. See Trimble v. City of Santa Rosa, 49 F.3d 583,
26 586 (9th Cir. 1995). Accordingly, Plaintiff may seek relief for the allegedly improper
27 calculation of time credits by filing a petition for a writ of habeas corpus pursuant to 28

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U.S.C. § 2254.

CONCLUSION

For the reasons set forth above, this action is DISMISSED without prejudice to filing as a new habeas action under 28 U.S.C. § 2254.

The Clerk shall enclose two copies of the court's form petition with a copy of this order to Plaintiff.

IT IS SO ORDERED.

Dated: 4/5/2017



EDWARD J. DAVILA
United States District Judge