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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 BERNELL WAYNE TILLER,

11 Plaintiff,

12 v.

13 ST JOSEPH HOSPITAL et al.,

14 Defendant.

CASE NO. C13-6066 BHS-JRC

ORDER DIRECTING PLAINTIFF
TO FILE AN AMENDED
COMPLAINT

15 The District Court has referred this 42 U.S.C. § 1983 civil rights action to United States
16 Magistrate Judge J. Richard Creatura. The Court's authority for the referral is 28 U.S.C. §
17 636(b)(1)(A) and (B), and local Magistrate Judge Rules MJR3 and MJR4.

18 The Court orders that plaintiff file an amended complaint because plaintiff's original
19 complaint contains a number of defects. Plaintiff's complaint is illegible in several places and
20 the Court is not entirely sure what issues plaintiff is trying to bring before the Court (ECF No. 1,
21 proposed complaint). Also, plaintiff seeks "release from jail" as part of his relief (*id.*).

22 Plaintiff's amended complaint must be dark enough that it can be scanned and entered
23 into the Court's electronic filing system. Plaintiff's cursive writing style also makes the hand
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1 written portions of the complaint difficult to discern. Plaintiff should consider printing the
2 complaint.

3 Also, plaintiff may not seek release from jail through a civil rights action. If a plaintiff is
4 challenging the very fact or duration of physical imprisonment, and the relief sought will
5 determine whether plaintiff is or was entitled to immediate release or a speedier release from that
6 imprisonment, plaintiff's sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*,
7 411 U.S. 475, 500 (1973).

8 The United States Supreme Court held that "[e]ven a prisoner who has fully exhausted
9 available state remedies has no cause of action under § 1983 unless and until the conviction or
10 sentence is reversed, expunged, invalidated, or impugned by the grant of a writ of habeas
11 corpus." *Heck v. Humphrey*, 512 U.S. 477, 487 (1994). The Court added:

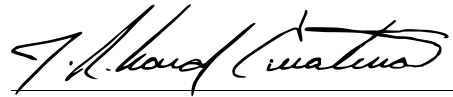
12 Under our analysis the statute of limitations poses no difficulty while the state
13 challenges are being pursued, since the § 1983 claim has not yet arisen. . . . [A]
14 § 1983 cause of action for damages attributable to an unconstitutional conviction
or sentence does not accrue until the conviction or sentence has been invalidated.

15 *Id.* at 489. "[T]he determination whether a challenge is properly brought under § 1983 must be
16 made based upon whether 'the nature of the challenge to the procedures [is] such as necessarily
17 to imply the invalidity of the judgment.' *Id.* If the Court concludes that the challenge would
18 necessarily imply the invalidity of the judgment or continuing confinement, then the challenge
19 must be brought as a petition for a writ of habeas corpus, not under § 1983." *Butterfield v. Bail*,
20 120 F.3d 1023, 1024 (9th Cir. 1997) (*quoting Edwards v. Balisok*, 520 U.S. 641 (1997)).

21 The Court orders that plaintiff submit an amended complaint on or before **January 31,**
22 **2014.** Plaintiff's amended complaint will act as a complete substitute for the original and not as a
23 supplement. Plaintiff's failure to file an amended complaint that cures the defects outlined in
24 this order will be grounds for the Court issuing a Report and Recommendation that this action be

1 dismissed for plaintiff's failure to obey a Court order and plaintiff's failure to prosecute the
2 action.

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4 Dated this 24th day of December, 2014.

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6 J. Richard Creatura
7 United States Magistrate Judge
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