



1 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,  
5 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally  
6 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,  
7 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

8 While persons proceeding pro se are still entitled to have their pleadings liberally construed  
9 and to have any doubt resolved in their favor, the pleading standard is now higher, Wilhelm v.  
10 Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive screening, Plaintiff’s  
11 claims must be facially plausible, which requires sufficient factual detail to allow the Court to  
12 reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal, 556 U.S. at  
13 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer possibility that a  
14 defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely consistent with’ a  
15 defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678; Moss,  
16 572 F.3d at 969.

## 17 II.

### 18 COMPLAINT ALLEGATIONS

19 In vague and conclusory fashion, Plaintiff challenges the calculation of his good time credits  
20 by the Sacramento County Superior Court and names the Sacramento County Superior Court as the  
21 sole Defendant.

## 22 III.

### 23 DISCUSSION

24 The exclusive method for challenging the fact or duration of Plaintiff’s confinement is by filing  
25 a petition for a writ of habeas corpus. Wilkinson v. Dotson, 544 U.S. 74, 78 (2005); 28 U.S.C. §  
26 2254(a). Such claims may not be brought in a section 1983 action. Nor may Plaintiff seek to  
27 invalidate the fact or duration of his confinement indirectly through a judicial determination that  
28 necessarily implies the unlawfulness of the State’s custody. Wilkinson, 544 U.S. at 81. Plaintiff also

1 cannot bring a section 1983 action where judgment in favor of Plaintiff would necessarily imply the  
2 invalidity of his conviction or sentence until such conviction or sentence has been dismissed or  
3 overturned. Heck v. Humphrey, 512 U.S. 477, 486-487. The reasoning in Heck applies “no matter the  
4 relief sought (damages or equitable relief).” Wilkinson, 544 U.S. at 81-82; Whitaker v. Garcetti, 486  
5 F.3d 572, 583 (9th Cir. 2007) (Heck’s principle applies regardless of the form of remedy sought.”).

6 Plaintiff is not seeking damages; he is challenging his credit calculation which affects the  
7 length of his criminal sentence. Nettles v. Grounds, 788 F.3d 992, 998 (9th Cir. 2015) (citing Preiser  
8 v. Rodriguez, 411 U.S. 475, 500 (1973)). As a result, Plaintiff is limited to seeking relief via a petition  
9 for writ of habeas corpus and this Court lacks jurisdiction over said petition. 28 U.S.C. § 2254(a).  
10 Venue for a habeas petition is proper in either the district of confinement or the district of conviction.  
11 Id. Because Plaintiff is challenging the calculation of his good time credits by the sentencing court  
12 which directly impacts the duration of his confinement, Plaintiff must file a petition in the sentencing  
13 court, namely the United States District Court for the Eastern District of California, Sacramento  
14 Division.<sup>1</sup>

## 15 II.

### 16 RECOMMENDATION

17 Based on the foregoing, it is HEREBY RECOMMENDED that Plaintiff’s complaint be  
18 dismissed, without leave to amend, for failure to state a cognizable claim for relief.

19 This Findings and Recommendation will be submitted to the United States District Judge  
20 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**  
21 after being served with this Findings and Recommendation, Plaintiff may file written objections with  
22 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
23 Recommendation.” Plaintiff is advised that failure to file objections within the specified time may

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27 <sup>1</sup> While the Court would typically grant Plaintiff leave to amend in light of his pro se status, in this circumstance  
28 amendment would be futile because Plaintiff cannot challenge his criminal sentence by way of a section 1983 complaint.  
See Schmier v. U.S. Court of Appeals for the Ninth Circuit, 279 F.3d 817, 824 (9th Cir. 2002) (recognizing “[f]utility of  
amendment” as a proper basis for dismissal without leave to amend).

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result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: February 19, 2016

  
UNITED STATES MAGISTRATE JUDGE