

1 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
2 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
3 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
4 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
5 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

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

15 II.

16 COMPLAINT ALLEGATIONS

17 Plaintiff names Stanislaus County, Judge Silveria, public defender Snypes, and district attorney
18 Holtman as Defendants in this action.

19 Plaintiff contends Stanislaus County has put his life in danger by not allowing him to leave.
20 Plaintiff was advised that he would be killed if he did not turn over evidence against certain outlaw
21 motorcycle clubs. When Plaintiff refused they roused up this case and filed criminal charges against
22 him.

23 Plaintiff’s public defender Snypes took Plaintiff in a room where Judge Silveria and deputy
24 attorney H. Holtman and two officers were waiting. The two officers slammed part of Plaintiff’s
25 upper body on the table and told him if he didn’t help them he could just as easily disappear. Ms.
26 Holtman and Judge Silveria said if Plaintiff did not help them they would “put this case on me and
27 ruin my life forever!” They also told Plaintiff it would be known that he was a confidential informant
28 on the outlaw bikers.

1 As relief, Plaintiff seeks to not be allowed to register so he can hide from the outlaw bikers
2 who want to kill him because he is a confidential informant. Plaintiff also seeks \$675,000.00 (\$300.00
3 for each day) he was incarcerated and away from his son.

4 **III.**

5 **DISCUSSION**

6 **A. Challenge to Criminal Conviction**

7 A challenge to conditions of confinement is properly raised in a civil rights action, a challenge
8 to the fact and/or the duration of confinement must be raised in a petition for writ of habeas corpus.
9 28 U.S.C. § 2254(a); Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (citing Preiser v. Rodriguez,
10 411 U.S. 475, 485(1973)); accord Beardslee v. Woodford, 395 F.3d 1064, 1068-69 (9th Cir. 2005)
11 (per curiam). To the extent Plaintiff wishes to challenge his conviction and/or sentence, his sole
12 remedy is to file a petition for writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. at 500. Indeed,
13 on February 1, 2016, Plaintiff filed a petition for writ of habeas corpus in this Court in Justin Michael
14 Thuemler v. Stanislaus County, 1:16-cv-00175-MJS (HC), which is presently pending. In that
15 petition, Plaintiff challenges his September 24, 2013, Stanislaus County conviction which resulted in a
16 six year prison term and contends he was threatened into a plea.¹ (1:16-cv-00175-MJS, ECF No. 1,
17 Petition, at 1.) Because Plaintiff's instant challenge to his Stanislaus County conviction and/or
18 sentence is not cognizable by way of a section 1983 complaint, the action must be dismissed for
19 failure to state a cognizable claim for relief.

20 **IV.**

21 **RECOMMENDATION**

22 Based on the foregoing, it is HEREBY RECOMMENDED that the instant action be dismissed,
23 without leave to amend, for failure to state a cognizable claim for relief.

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¹ In addition, Plaintiff previously brought an action in this Court in case number 1:16-cv00182-AWI-SAB (PC) and
27 describes such action as the "same as above." (ECF No. 1, Compl. at 1.) In that case, a Findings and Recommendation
28 recommending dismissal of the action for failure to state a cognizable claim for relief was issued on February 12, 2016.
(ECF No. 6.)

1 This Findings and Recommendation will be submitted to the United States District Judge
2 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
3 after being served with this Findings and Recommendation, Plaintiff may file written objections with
4 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
5 Recommendation.” Plaintiff is advised that failure to file objections within the specified time may
6 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
7 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
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9

10 IT IS SO ORDERED.

11 Dated: March 11, 2016



UNITED STATES MAGISTRATE JUDGE