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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY ELL SHEHEE,

 Plaintiff,

 v.

MEILCA VILLALOBOS,

 Defendant.

Case No. 1:14-cv-00622 LJO DLB PC

FINDINGS AND RECOMMENDATION
REGARDING DISMISSAL OF COMPLAINT

TWENTY-ONE DAY DEADLINE

Plaintiff Gregory Ell Shehee (“Plaintiff”) is a civil detainee proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on April 24, 2014. He names Litigation Coordinator Meilca Villalobos as Defendant.

A. SCREENING REQUIREMENT

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a

1 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

2 A complaint must contain “a short and plain statement of the claim showing that the pleader
3 is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
4 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
5 do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing Bell Atl. Corp. v. Twombly,
6 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient factual matter, accepted as true, to
7 ‘state a claim that is plausible on its face.’” Id. (quoting Twombly, 550 U.S. at 555). While factual
8 allegations are accepted as true, legal conclusions are not. Id.

9 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other
10 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092
11 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.
12 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or
13 omissions of each named defendant to a violation of his rights; there is no respondeat superior
14 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d
15 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);
16 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim
17 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
18 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.
19 at 678; Moss, 572 F.3d at 969.

20 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

21 Plaintiff titles his complaint as a “Complaint for Injuries for Depriving/Dening [sic] the
22 Withholding of Evidence.” The complaint is vague, but to the extent it can be understood, it appears
23 Plaintiff is asking the court to grant a motion to compel documents in a separate state action.
24 Plaintiff complains that he handed five packets of documents to a Deputy District Attorney while in
25 Coalinga Superior Court. He states those five packets have not been returned to him. The balance
26 of the complaint lists documents and exhibits that he is requesting.
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1 **C. DISCUSSION**

2 1. No Cause of Action

3 Plaintiff fails to state a cause of action under Section 1983. Plaintiff presents no violation of
4 his constitutional or other federal rights by persons acting under color of state law. Nurre v.
5 Whitehead, 580 F.3d 1087, 1092 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178,
6 1185 (9th Cir. 2006); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Therefore, the
7 complaint should be dismissed.

8 2. Linkage

9 Under section 1983, Plaintiff must link the named defendants to the participation in the
10 violation at issue. Ashcroft v. Iqbal, 556 U.S. 662, 676-77, 129 S.Ct. 1937, 1948-49 (2009);
11 Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of
12 Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
13 2002). Liability may not be imposed under a theory of *respondeat superior*, and some causal
14 connection between the conduct of each named defendant and the violation at issue must exist.
15 Iqbal, 556 U.S. at 676-77; Lemire v. California Dep't of Corr. and Rehab., 726 F.3d 1062, 1074-75
16 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc); Starr v.
17 Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012).

18 As noted above, Plaintiff fails to demonstrate a violation of his constitutional or other federal
19 rights. Further, he fails to link Defendant Villalobos with any action that purportedly violated his
20 rights.

21 3. Mandamus

22 Insofar as Plaintiff's complaint can be construed as a petition for writ of mandamus directed
23 at prison staff in order that he be provided the materials he seeks, he is not entitled to the requested
24 relief. The All Writs Act provides that "[t]he Supreme Court and all courts established by Act of
25 Congress may issue all writs necessary or appropriate in the aid of their respective jurisdictions and
26 agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). While a writ of mandamus
27 may be issued under the All Writs Act, "[m]andamus is a 'drastic and extraordinary remedy reserved
28 for really extraordinary causes.'" Hernandez v. Tanninen, 604 F.3d 1095, 1099 (9th Cir. 2010)

1 (quoting Cheney v. U.S. Dist. Court for Dist. of Columbia, 542 U.S. 367, 380 (2004)).

2 In addition to jurisdictional issues arising from Plaintiff's desire for a federal writ directed at
3 state prison officials, see Cheney, 542 U.S. at 380 (section 1651(a) codified the common-law writ of
4 mandamus against a lower court); Demos v. U.S. Dist. Court for Eastern Dist. of Washington, 925
5 F.2d 1160, 1161-62 (9th Cir. 1991) (no jurisdiction to issue writ to a state court), Plaintiff cannot
6 demonstrate (1) the absence of any other adequate means to attain relief and (2) a clear and
7 indisputable right to the issuance of the writ, Cheney, 542 U.S. at 380-81.

8 **D. CONCLUSION AND RECOMMENDATION**

9 Plaintiff's complaint fails to state any claims upon which relief may be granted under section
10 1983. The deficiencies at issue are not curable through amendment, Akhtar v. Mesa, 698 F.3d 1202,
11 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). Accordingly, the
12 Court HEREBY RECOMMENDS that this action be dismissed with prejudice for failure to state a
13 claim.

14 These Findings and Recommendations are submitted to the United States District Judge
15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-one
16 (21) days after date of service of these Findings and Recommendations, Plaintiff may file written
17 objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's
18 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
19 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
20 1153 (9th Cir. 1991).

21
22 IT IS SO ORDERED.

23 Dated: March 18, 2015

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE