

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 contends that his due process rights were violated based on the denial of an
18 evidentiary hearing in the state court to correct his sentence of 25 years to life. Plaintiff requests
19 access to evidence in the original finding of the state court to be made a matter of record for the
20 determination of unsuitability for an increased sentence. Plaintiff contends that there was no valid
21 filing of an information in the Merced County Superior Court and the imposed sentence is
22 unauthorized and void.

23 Plaintiff sought review by way of petition for writ of habeas corpus to the state superior court,
24 state appellate court, and California Supreme Court. Plaintiff alleges the failure to correct his
25 unlawful conviction and sentence has resulted in a fundamental miscarriage of justice.

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1 **III.**

2 **DISCUSSION**

3 Plaintiff's challenge to his conviction and/or sentence is not cognizable in this action. A
4 plaintiff may not in a civil rights action challenge a conviction or seek release from confinement.
5 Habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his
6 confinement and seeks speedier release. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

7 Further, in Heck v. Humphrey, 512 U.S. 477, (1994), the Supreme Court held that to recover
8 damages for "harm caused by actions whose unlawfulness would render a conviction or sentence
9 invalid," a section 1983 Plaintiff must prove that the conviction or sentence was reversed, expunged,
10 or otherwise invalidated. Heck v. Humphrey, 512 U.S. at 486-487. In section 1983 suits the Court
11 must "consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of
12 his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can
13 demonstrate that the conviction or sentence has already been invalidated." Id. at 487. The Heck bar
14 preserves the rule that federal challenges, which, if successful, would necessarily imply the invalidity
15 of incarceration or its duration, must be brought by way of petition for writ of habeas corpus, after
16 exhausting appropriate avenues of relief. Muhammad v. Close, 540 U.S. 749, 750-751 (2004).
17 Accordingly, "a state prisoner's [section] 1983 action is barred (absent prior invalidation) – no matter
18 the relief sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct
19 leading to conviction or internal prison proceedings) – if success in that action would necessarily
20 demonstrate the invalidity of confinement or its duration. Wilkinson v. Dotson, 544 U.S. 74, 81-82
21 (2005); see also Edwards v. Balisok, 520 U.S. 641, 644-646 (1997) (holding that claims alleging
22 procedural defects and bias by a hearing officer at disciplinary hearing were not cognizable under
23 Heck, because they implied the invalidity of a credit forfeiture imposed at the hearing).

24 The fact that the state courts denied Plaintiff's writ of habeas corpus petitions does not provide
25 a basis to seek relief by way of section 1983, because absent a showing the conviction and/or sentence
26 was invalidated, not present here, Plaintiff's sole remedy to challenge such conviction and/or sentence
27 is by way of petition for writ of habeas corpus. Thus, the instant complaint must be dismissed,
28 without prejudice, and without leave to amend as amendment in this instance would be futile. See

1 Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (declining to convert civil rights
2 complaint barred by Heck into habeas petition; to do so might foreclose effective review of habeas
3 claims not asserted in civil rights action); see also McQuillion v. Schwarzenegger, 369 F.3d 1091,
4 1099 (9th Cir. 2004) (affirming dismissal of civil rights complaint without leave to amend where
5 amendment would have been futile due to Heck bar).

6 **IV.**

7 **RECOMMENDATION**

8 Based on the foregoing,

9 IT IS HEREBY RECOMMENDED that the instant complaint be dismissed, without prejudice,
10 and without leave to amend, for failure to state a cognizable claim under section 1983. Should
11 Plaintiff wish to pursue his claims he must do so by way of petition for writ of habeas corpus.

12 This Findings and Recommendation will be submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fifteen (15)**
14 **days** after being served with these Findings and Recommendation, Plaintiff may file written objections
15 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
16 Recommendation." Plaintiff is advised that failure to file objections within the specified time may
17 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 IT IS SO ORDERED.

21 Dated: August 13, 2014



22 UNITED STATES MAGISTRATE JUDGE