



1 1178, 1177 (9th Cir. 1999).

2 If a plaintiff seeks to proceed *in forma pauperis*, the Court is required to review the complaint,  
3 and shall dismiss the case at any time if the Court determines that the allegation of poverty is untrue, or  
4 the action or appeal is “frivolous, malicious or fails to state a claim on which relief may be granted; or  
5 ... seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2).  
6 A claim is frivolous “when the facts alleged arise to the level of the irrational or the wholly incredible,  
7 whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*,  
8 504 U.S. 25, 32-33 (1992); *see also Neitzke v. Williams*, 490 U.S. 319, 325, 328 (1989) (finding claims  
9 may be dismissed as “frivolous” where the allegations are “fanciful” or “describe[e] fantastic or  
10 delusional scenarios”).

11 Here, the Court recommends Plaintiff’s application to proceed be denied because, as discussed  
12 below, Plaintiff fails to state a claim upon which relief may be granted by this Court.

## 13 **II. Pleading Requirements**

14 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A  
15 complaint must include a statement affirming the court’s jurisdiction, “a short and plain statement of  
16 the claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may  
17 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a). The Federal Rules  
18 adopt a flexible pleading policy, and *pro se* pleadings are held to “less stringent standards” than those  
19 drafted by attorneys. *Haines v. Kerner*, 404 U.S. 519, 521-21 (1972).

20 A complaint must state the elements of the plaintiff’s claim in a plain and succinct manner.  
21 *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The purpose of a complaint  
22 is to give the defendant fair notice of the claims against him, and the grounds upon which the  
23 complaint stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

24 Rule 8 does not require detailed factual allegations, but it demands more than an  
25 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
26 labels and conclusions or a formulaic recitation of the elements of a cause of action will  
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further  
factual enhancement.

27 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks and citations omitted).

28 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d

1 266, 268 (9th Cir. 1982). The Court clarified further,

2 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
3 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when the  
4 plaintiff pleads factual content that allows the court to draw the reasonable inference  
5 that the defendant is liable for the misconduct alleged. [Citation]. The plausibility  
6 standard is not akin to a “probability requirement,” but it asks for more than a sheer  
possibility that a defendant has acted unlawfully. [Citation]. Where a complaint pleads  
facts that are “merely consistent with” a defendant’s liability, it “stops short of the line  
between possibility and plausibility of ‘entitlement to relief.’”

7 *Iqbal*, 556 U.S. at 678 (citations omitted). If factual allegations are well-pled, a court should assume  
8 their truth and determine whether the facts would make the plaintiff entitled to relief; conclusions in the  
9 pleading are not entitled to the same assumption of truth. *Id.*

### 10 **III. Plaintiff’s Allegations and the Relief Requested**

11 Plaintiff filed a “notice of removal from the Superior Court of California, County of Kern,”  
12 arguing that he was placed on probation unlawfully and the defendants have violated his civil rights  
13 pursuant to 42 U.S.C. §1983.<sup>1</sup> (Doc. 1 at 1) According to the docket of the Kern County Superior  
14 Court, Plaintiff was placed on probation for four years in Case No. BF155898A. Plaintiff was  
15 arraigned for a violation of probation on November 2, 2015, and a formal revocation hearing is  
16 scheduled to occur on December 15, 2015.

17 According to Plaintiff, he has registered as a “Secured Party Creditor” with the State of  
18 Colorado<sup>2</sup>, and the defendants “[d]id not provide<sup>2</sup> evidence ... certified under penalty of perjury” that  
19 Plaintiff was able to be placed under probation. (*Id.*) Thus, it appears that Plaintiff challenges the  
20 imposition of probation and the ability of the state court to find he violated its terms.

### 21 **IV. Discussion and Analysis**

22 In general, federal courts are required to abstain from interfering on ongoing state criminal  
23 matters. *Younger v. Harris*, 401 U.S. 37, 43-45 (1971). This abstention doctrine applies if four  
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25 <sup>1</sup> The court may take judicial notice of facts that are capable of accurate and ready determination by resort to  
26 sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b); *United States v. Bernal-Obeso*, 989 F.2d  
27 331, 333 (9th Cir. 1993). The record of state court proceeding is a source whose accuracy cannot reasonably be questioned,  
28 and judicial notice may be taken of court records. *Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir.  
1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), *aff’d*, 645 F.2d 699 (9th Cir. 1981); *see*  
*also Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th. Cir. 1980). As such, the records of the Kern County  
Superior Court are subject to judicial notice.

<sup>2</sup> Moreover, Plaintiff fails to demonstrate how this act excuses him from compliance with the law or imposes any  
special obligations on the defendants.

1 conditions are met: “(1) a state-initiated proceeding is ongoing; (2) the proceeding implicates important  
2 state interests; (3) the federal plaintiff is not barred from litigating federal constitutional issues in the  
3 state proceeding; and (4) the federal court action would enjoin the proceeding or have the practical  
4 effect of doing so, i.e., would interfere with the state proceeding in a way that *Younger* disapproves.  
5 *San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose*, 546 F.3d  
6 1087, 1092 (9th Cir.2008).

7 First, it is clear the state criminal proceedings are ongoing, and Plaintiff remains in the custody  
8 of the state. *See United States v. Spawr Optical Research, Inc.*, 864 F.2d 1467, 1470 (9th Cir.1988),  
9 *cert. denied*, 493 U.S. 809 (1989) (holding that individuals who are currently serving probation terms  
10 are “in custody”). Second, the state criminal proceedings implicate important state interests. Indeed, in  
11 *Kelly v. Robinson*, 479 U.S. 36, 49 (1986), the Court held, “This Court has recognized that the States’  
12 interest in administering their criminal justice systems free from federal interference is one of the most  
13 powerful of the considerations that should influence a court considering equitable types of relief.”  
14 Likewise, in *Younger*, the Supreme Court held, “Since the beginning of this country’s history Congress  
15 has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from  
16 interference by federal courts.” *Younger*, 401 U.S. at 43.

17 Third, there is no showing Plaintiff could not challenge his sentence in a petition for writ in the  
18 state court of appeal. Moreover, there is no procedural bar from Plaintiff raising his federal claim in  
19 the state proceeding. *Martori Bros. Distribs. v. James–Massengale*, 781 F.2d 1349, 1352, 1354 (9th  
20 Cir.). Thus, he has a full and fair opportunity to raise the federal claims in state court. *Comm’n’s*  
21 *Telesys. Int’l v. Cal. Pub. Util. Comm’n*, 196 F.3d 1011, 1019 (9th Cir.1999). Finally, Plaintiff’s  
22 complaint seeks to insert the federal court into the ordinary course of state criminal proceedings and, if  
23 permitted, would threaten the autonomy of the state court. Thus, the complaint must be dismissed.

#### 24 **V. Order**

25 Good cause appearing, the Clerk of Court is **DIRECTED** to assign a United States District  
26 Judge to this action.

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1 **VI. Findings and Recommendations**

2 Plaintiff seeks to remove his state criminal proceedings to the federal court, which should not  
3 assume jurisdiction over his claims pursuant to *Younger*.

4 Based upon the foregoing, **IT IS HEREBY RECOMMENDED:**

- 5 1. Plaintiff's motion to proceed *in forma pauperis* be **DENIED**;
- 6 2. The complaint be **DISMISSED** without prejudice; and
- 7 3. The Clerk of Court be directed to close this action.

8 These Findings and Recommendations are submitted to the United States District Judge  
9 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local  
10 Rules of Practice for the United States District Court, Eastern District of California. Within fourteen  
11 days after being served with these Findings and Recommendations, Plaintiff may file written objections  
12 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings and  
13 Recommendations." Plaintiff is advised that failure to file objections within the specified time may  
14 waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991);  
15 *Wilkerson v. Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

16  
17 IT IS SO ORDERED.

18 Dated: December 9, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE