

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

17 II.

18 COMPLAINT ALLEGATIONS

19 Plaintiff names the United States District Court for the Eastern District of California, as the
20 sole Defendant.

21 In his first claim, Plaintiff states “found watches on the ground not me on video[,]” and
22 references absconding and probation/parole. In the second claim, Plaintiff states “[F]ifth Amendment
23 my right is not to say anything because might be incriminated[,]” and references the claim as criminal.
24 In the third claim, Plaintiff references absconding and a parole warrant hold.

25 As relief, Plaintiff requests modification of disposition.

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1 **III.**

2 **DISCUSSION**

3 A habeas corpus petition is the correct method for a prisoner to challenge the “legality or
4 duration” of his confinement. Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991), quoting, Preiser v.
5 Rodriguez, 411 U.S. 475, 485 (1973); Advisory Committee Notes to Rule 1 of the Rules Governing
6 Section 2254 Cases. In contrast, a civil rights action pursuant to 42 U.S.C. § 1983 is the proper
7 method for a prisoner to challenge the conditions of that confinement. McCarthy v. Bronson, 500
8 U.S. 136, 141-42 (1991); Preiser, 411 U.S. at 499; Badea, 931 F.2d at 574; Advisory Committee Notes
9 to Rule 1 of the Rules Governing Section 2254 Cases. “[R]elief is available to a prisoner under the
10 federal habeas statute . . . if success on the claim would ‘necessarily spell speedier release’ from
11 custody, which . . . include termination of custody, acceleration of the future date of release from
12 custody, or reduction of the level of custody.” Nettles v. Grounds, 788 F.3d 992, 1001 (9th Cir. 2015)
13 (quoting Skinner v. Switzer, 562 U.S. 521, 534 (2011)).

14 Plaintiff is seeking to challenge the constitutionality of his conviction and/or his custody rather
15 than the conditions of his confinement. In order for a modification of the disposition, it would have to
16 be determined Plaintiff’s present conviction is invalid. Thus, Plaintiff’s claims effectively challenge
17 his current custody and release therefrom which cannot be raised by way of a section 1983 complaint.
18 Plaintiff must file a habeas corpus petition pursuant to 28 U.S.C. § 2254.¹ Accordingly, Plaintiff’s
19 complaint must be dismissed, without prejudice. Although the Court would generally grant Plaintiff
20 leave to amend in light of his pro se status, amendment is futile in this instance because the
21 deficiencies cannot be cured by amendment. See Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir.
22 2000); Schmier v. U.S. Court of Appeals for the Ninth Circuit, 279 F.3d 817, 824 (9th Cir. 2002)
23 (recognizing “[f]utility of amendment” as a proper basis for dismissal without leave to amend); see
24 also Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (a civil rights complaint seeking
25 habeas relief should be dismissed without prejudice to filing as a petition for writ of habeas corpus).

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¹ Pursuant to 28 U.S.C. § 2241(d), venue for a habeas action challenging the validity of the conviction and/or sentence is proper in the district of conviction.

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IV.
RECOMMENDATIONS

Based on the foregoing, it is HEREBY RECOMMENDING that:

1. The complaint be dismissed for failure to state a cognizable claim for relief; and
2. The Clerk of Court is directed to terminate this action.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file objections within the specified time may 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: March 8, 2017



UNITED STATES MAGISTRATE JUDGE