

1 **I. Pleading Standard**

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, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
6 550 U.S. 544, 555 (2007)). Plaintiffs must set forth “sufficient factual matter, accepted as true, to
7 state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678. Facial plausibility
8 demands more than the mere possibility that a defendant committed misconduct and, while factual
9 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 677-78.

10 Section 1983 “provides a cause of action for the deprivation of any rights, privileges, or
11 immunities secured by the Constitution and laws of the United States.” Wilder v. Virginia Hosp.
12 Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). To state a claim under section 1983,
13 a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws
14 of the United States was violated and (2) that the alleged violation was committed by a person
15 acting under the color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v.
16 Alameda Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

17 Under section 1983 the plaintiff must demonstrate that each defendant personally
18 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).
19 This requires the presentation of factual allegations sufficient to state a plausible claim for relief.
20 Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners
21 proceeding pro se in civil rights actions are entitled to have their pleadings liberally construed and
22 to have any doubt resolved in their favor, Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
23 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of meeting the
24 plausibility standard, Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

25 **II. Plaintiff’s Allegations**

26 Plaintiff was a state inmate housed at California State Prison in Avenal, California. He
27 names as defendants the Director of the California Department of Corrections and Rehabilitation
28 and the Los Angeles County Superior Court. Plaintiff’s allegations can be fairly summarized as

1 follows:

2 In March 2018, plaintiff filed a petition for writ of habeas corpus in the Los Angeles
3 County Superior Court, Case No. LA083211. When that petition was denied, plaintiff appealed to
4 the California Court of Appeal, Second Appellate District, which was assigned Case No.
5 B291009.

6 On July 13, 2018, the California appellate court issued the following order:

7 TO THE SECRETARY OF THE CALIFORNIA DEPARTMENT
8 OF CORRECTIONS AND REHABILITATION: The petition for
9 writ of habeas corpus filed June 29, 2018 has been read and
10 considered. Good cause appearing, you are hereby ordered to:
11 SHOW CAUSE before the Superior Court of the County of Los
12 Angeles, when the matter is placed on calendar, why petitioner
13 should not be resentenced under Penal Code section 1170,
14 subdivision (d)(1), based on the July 14, 2017 letter by the California
15 Department of Corrections and Rehabilitation, which identified a
16 potential sentencing error. (See People v. Hill (1986) 185 Cal. App.
17 3d 831, 833-834; see also People v. Loper (2015) 60 Cal. 4th 1155,
1165-1167.) The clerk of this court is directed to send the superior
18 court a copy of the petition with exhibits and to serve it with this
19 order to show cause. Upon receipt, the superior court is directed to
20 file the petition in that court, appoint counsel for petitioner, set a
21 briefing schedule for the parties, and set a hearing to determine
22 whether petitioner should be resentenced under Penal Code section
23 1170, subdivision (d)(1). The clerk of this court is further directed to
24 send the Secretary of the California Department of Corrections and
25 Rehabilitation a copy of the petition with exhibits and to serve it with
26 this order to show cause.

27 See In re WILLIAM RIVAS, Case No. B291009 (Cal. Ct. App.).

28 When the Secretary of the CDCR failed to respond to the court's order, plaintiff filed a
29 motion in the superior court to urge the Secretary to comply. To date, the Los Angeles County
30 Superior Court has not set a briefing schedule and the Secretary of the CDCR has not responded
31 to the appellate court's order. Plaintiff claims their failure to do so violates his constitutional
32 rights and has kept him incarcerated longer than he should be.

33 Plaintiff alleges a violation of his First, Eighth, and Fourteenth Amendment rights, as well
34 as violations of the California constitution and California Penal Code § 1170(d)(1). He seeks
35 damages, declaratory relief, and injunctive relief in the form of an order directing the defendants
36 to comply with the California appellate court.

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1 **III. Discussion**

2 **A. Failure to State a Claim**

3 To state a claim under section 1983, a plaintiff must allege (1) that a right secured by the
4 Constitution or laws of the United States was violated and (2) that the alleged violation was
5 committed by a person acting under the color of state law. See West, 487 U.S. at 48. Stated
6 simply, plaintiff’s allegation that the Secretary of the CDCR and the Los Angeles County
7 Superior Court have not responded to the California appellate court’s order in plaintiff’s state
8 habeas action does not implicate the Constitution or laws of the United States.

9 A habeas petition is also not the proper channel through which to obtain relief because the
10 relief that plaintiff seeks here—an order directing the defendants to respond to the state appellate
11 court—is not premised on an attack on the legality of his conviction or sentence and would not
12 necessarily result in a speedier release. Crawford v. Bell, 599 F.2d 890, 891-92 (9th Cir. 1979);
13 Tucker v. Carlson, 925 F.2d 330, 332 (9th Cir. 1990).

14 It appears plaintiff may better be served by continuing to pursue his claim before the state
15 appellate court and/or the Los Angeles County Superior Court. Either way, proceedings in this
16 Court must be dismissed for failure to state a claim.

17 **B. Younger Abstention**

18 In addition, even assuming Plaintiff’s complaint stated a cognizable claim—and it does
19 not—the Court must dismiss it as required by the Younger abstention doctrine because it
20 identifies an ongoing state court proceeding. In general, federal courts are required to abstain
21 from interfering on ongoing state matters. Younger v. Harris, 401 U.S. 37, 43-45 (1971).
22 Although Younger dealt with a criminal prosecution, the Supreme Court has extended the
23 abstention principles to civil actions. Middlesex County Ethics Comm. v. Garden State Bar
24 Assoc., 457 U.S. 423, 432 (1982); see also Potrero Hills Landfill, Inc. v. County of Solano, 657
25 F.3d 876, 882 (9th Cir. 2011).

26 The Younger abstention doctrine applies if four conditions are met: “(1) a state-initiated
27 proceeding is ongoing; (2) the proceeding implicates important state interests; (3) the federal
28 plaintiff is not barred from litigating federal constitutional issues in the state proceeding; and (4)

1 the federal court action would enjoin the proceeding or have the practical effect of doing so, i.e.,
2 would interfere with the state proceeding in a way that Younger disapproves.” San Jose Silicon
3 Valley Chamber of Commerce Political Action Comm. v. City of San Jose, 546 F.3d 1087, 1092
4 (9th Cir. 2008).

5 First, plaintiff’s complaint identifies ongoing state court case. Second, the proceeding
6 implicates the state’s important interest of sentencing a convicted felon in compliance with state
7 law. See Peterson, 708 F.2d at 466; Hernstadt, 373 F.2d at 217. Third, there is no indication that
8 plaintiff could not challenge the holdings of the state court with an appeal. Finally, plaintiff’s
9 complaint seeks to insert the federal court into the ordinary course of state proceedings and, if
10 permitted, would threaten the autonomy of the state court. Thus, the Court finds plaintiff’s claims
11 are also barred by the Younger abstention doctrine

12 **IV. Conclusion**

13 For the reasons set forth above, plaintiff fails to state a cognizable claim, and the Court
14 finds that granting plaintiff leave to amend his complaint would be futile. See Hartmann v.
15 CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to amend when
16 amendment would be futile.”).

17 Therefore, the Court **ORDERS** that a district judge be assigned to this case; and

18 The Court **RECOMMENDS** that this case be dismissed with prejudice.

19 These findings and recommendations will be submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. The document should be captioned
23 “Objections to Magistrate Judge's Findings and Recommendations.” Any response to the
24 objections shall be filed and served within seven days after service of the objections. The parties
25 are advised that failure to file objections within the specified time may result in waiver of the
26 right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). In the
27 objections, the party may address whether a certificate of appealability should issue in the event
28 an appeal of the judgment in this case is filed. See Rule 11, Rules Governing § 2254 Cases (the

1 district court must issue or deny a certificate of appealability when it enters a final order adverse
2 to the applicant).

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4 IT IS SO ORDERED.

5 Dated: April 5, 2019

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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