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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JESUS TORRES,  
Plaintiff,  
v.  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE, et al.,  
Defendants.

**1:19-cv-01692-DAD-GSA-PC**  
**FINDINGS AND RECOMMENDATIONS,**  
**RECOMMENDING THAT THIS CASE BE**  
**DISMISSED, WITH PREJUDICE, FOR**  
**FAILURE TO STATE A CLAIM**  
**(ECF No. 12.)**  
**OBJECTIONS, IF ANY, DUE WITHIN**  
**FOURTEEN DAYS**

**I. BACKGROUND**

Jesus Torres (“Plaintiff”) is a state prisoner proceeding *pro se* with this civil rights action pursuant to 42 U.S.C. § 1983. On December 3, 2019, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) On January 21, 2020, the court severed Plaintiff’s claims against defendants Riverside County Superior Court, Mr. Miranda, and Riverside County Jail from this case for lack of venue and transferred those claims to the United States District Court for the

1 Central District of California, leaving defendant Sullivan (Warden, California Correctional  
2 Institution) as the sole defendant in this case. (ECF No. 6.)

3 On January 28, 2021, the court dismissed the Complaint for failure to state a claim, with  
4 leave to amend. (ECF No. 8.) On February 25, 2021, Plaintiff filed the First Amended  
5 Complaint. (ECF No. 9.) On March 1, 2021, the court issued an order striking the First Amended  
6 Complaint for lack of Plaintiff's signature, with leave to file a Second Amended Complaint  
7 bearing Plaintiff's signature. (ECF No. 11.) On March 25, 2021, Plaintiff filed the Second  
8 Amended Complaint which is now before the court for screening. 28 U.S.C. § 1915. (ECF No.  
9 12.)

## 10 **II. SCREENING REQUIREMENT**

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

19 Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited  
20 exceptions, none of which apply to § 1983 actions. Swierkiewicz v. Sorema, N.A., 534 U.S. 506,  
21 512 (2002). Under federal notice pleading, a complaint is required to contain "a short and plain  
22 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).  
23 Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause  
24 of action, supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S.  
25 662, 678 (2009) (citing Bell Atlantic v. Twombly, 550 U.S. 444, 555 (2007)). While a plaintiff's  
26 allegations are taken as true, courts "are not required to indulge unwarranted inferences." Doe I  
27 v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation  
28 omitted). To state a viable claim, Plaintiff must set forth "sufficient factual matter, accepted as

1 true, to ‘state a claim to relief that is plausible on its face.’” Iqbal, 556 U.S. at 678-79; Moss v.  
2 U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls  
3 short of meeting this plausibility standard. Id.

### 4 **III. SUMMARY OF SECOND AMENDED COMPLAINT**

5 Plaintiff is currently incarcerated at California Men’s Colony-West, in San Luis Obispo,  
6 California, in the custody of the California Department of Corrections and Rehabilitation.  
7 Plaintiff names as defendants Mr. Miranda (Investigator, Riverside County), Alex Perez  
8 (Lawyer, Riverside County), Gary Polk (District Attorney, Superior Court of California, County  
9 of Riverside), Melissa More (District Attorney, Superior Court of California, County of  
10 Riverside), and Mac Fisher (Judge, Superior Court of California, County of Riverside)  
11 (“Defendants”).

12 Plaintiff’s allegations follow:

13 Defendant Miranda, investigator for Riverside County, falsified allegations and gave a  
14 false report to the prosecutors. See the case summary and the date of the offense violation of all  
15 charges dated September 1, 2010, which are all the same and the same person, one day under ten  
16 years and the same day under 14 – that’s impossible.

17 Defendant Alex Perez, attorney, Riverside County, never objected or had an internal  
18 investigation of all the allegations or saw if due process was implemented or referred to the Grand  
19 Jury to hear the government’s evidence against a person who is suspected of a crime and  
20 determine whether there was sufficient evidence to bring that person to trial. The charges of a  
21 serious violent crime need DNA evidence. They will also question the date of offense –  
22 September 1, 2010 – same date under 10 and under 14 with the same person, with no strong  
23 evidence like a DNA expert’s report.

24 The prosecutor never had the Grand Jury or submitted government evidence for  
25 indictment or had a formal accusation of a felony issued by a Grand Jury after considering  
26 evidence presented by the prosecutor.

27 Defendant Honorable Judger Mac Fisher allowed the jury trial without due process.  
28 There was no cross-examination at all.

1           When Plaintiff requested his Privacy Act information in 2018 until he was transferred  
2 from CCI to CMC in 2019, Mr. Rosender [not a defendant], Counselor II, always denied  
3 Plaintiff's request and pointed fingers at the Sacramento CDCR Main Office. This was not only  
4 with Plaintiff, but with everyone else requesting their Privacy Act information at CCI Tehachapi.  
5 At CMC when Plaintiff submitted his claim, he was approved, but until now there has been no  
6 action on a sentencing recall. The court, the District Attorney's Office, and CDCR violated  
7 Plaintiff's constitutional rights by not following criminal procedure. There is no submitting  
8 report of Plaintiff's legal document record for retention of his central file, and CDCR cannot  
9 provide Plaintiff's request for access to his legal documents. Again, due process was not  
10 implemented, and Plaintiff continues to receive punishment in prison without having his Privacy  
11 Act information, which is his right of access to the court. Plaintiff was also found positive of  
12 Covid-19 and is still at risk for his age, 67 years old. Plaintiff attached copies to support his  
13 claims that the allegations of habitual offender, prior sex offender, and prior prison, and a  
14 conviction of 3rd striker was unprecedented and never occurred. These are the results of mass  
15 incarceration and as Governor Newsom said, destroyed lives and wasted billions of dollars.

16           Plaintiff requests an order releasing him and clearing his name of false charges of prior  
17 offenses that never occurred, and general damages.

#### 18 **IV. PLAINTIFF'S CLAIMS**

19           The Civil Rights Act under which this action was filed provides:

20           Every person who, under color of any statute, ordinance, regulation, custom, or  
21 usage, of any State or Territory or the District of Columbia, subjects, or causes to  
22 be subjected, any citizen of the United States or other person within the  
23 jurisdiction thereof to the deprivation of any rights, privileges, or immunities  
secured by the Constitution and laws, shall be liable to the party injured in an  
action at law, suit in equity, or other proper proceeding for redress . . . .

24 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely  
25 provides ‘a method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490  
26 U.S. 386, 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also  
27 Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles,

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1 697 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);  
2 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006).

3 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted  
4 under color of state law and (2) the defendant deprived him of rights secured by the Constitution  
5 or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); see also  
6 Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of  
7 state law”). A person deprives another of a constitutional right, “within the meaning of § 1983,  
8 ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an act  
9 which he is legally required to do that causes the deprivation of which complaint is made.’”  
10 Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) (quoting  
11 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection may be  
12 established when an official sets in motion a ‘series of acts by others which the actor knows or  
13 reasonably should know would cause others to inflict’ constitutional harms.” Preschooler II, 479  
14 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of causation “closely resembles  
15 the standard ‘foreseeability’ formulation of proximate cause.” Arnold v. Int’l Bus. Mach. Corp.,  
16 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City of Los Angeles, 533 F.3d 1010,  
17 1026 (9th Cir. 2008).

#### 18 **A. Venue**

19 The federal venue statute requires that a civil action may be brought in “(1) a judicial  
20 district in which any defendant resides, if all defendants are residents of the State in which the  
21 district is located; (2) a judicial district in which a substantial part of the events or omissions  
22 giving rise to the claim occurred, or a substantial part of property that is the subject of the action  
23 is situated; or (3) if there is no district in which an action may otherwise be brought as provided  
24 in this section, any judicial district in which any defendant is subject to the court’s personal  
25 jurisdiction with respect to such action. 28 U.S.C. § 1391.

26 It appears that all of Plaintiff’s claims in the Second Amended Complaint arose from  
27 events occurring in Riverside County, California, which is located in the United States District  
28 Court for the Central District of California. This court lacks venue over these claims and

1 therefore, they should all be dismissed from this case for failure to state a claim, without leave to  
2 amend. If Plaintiff wishes to pursue these claims he should bring a case in the Central District  
3 of California.<sup>1</sup>

4 **V. CONCLUSION AND RECOMMENDATIONS**

5 For the reasons set forth above, the court finds that Plaintiff fails to state any cognizable  
6 claims in the Second Amended Complaint against any of the Defendants for violating his  
7 constitutional or other federal rights. Under Rule 15(a) of the Federal Rules of Civil Procedure,  
8 “[t]he court should freely give leave to amend when justice so requires.” The Court previously  
9 granted Plaintiff leave to amend the complaint, with ample guidance by the Court. Plaintiff has  
10 now filed three complaints without stating any claims upon which relief may be granted under §  
11 1983.

12 The court is persuaded that Plaintiff is unable to allege any facts, based upon the  
13 circumstances he challenges, that would state a cognizable claim under section 1983. “A district  
14 court may deny leave to amend when amendment would be futile.” Hartmann v. CDCR, 707  
15 F.3d 1114, 1130 (9th Cir. 2013). Here, the court finds that the deficiencies outlined above are  
16 not capable of being cured by amendment, and therefore further leave to amend should not be  
17 granted. 28 U.S.C. § 1915(e)(2)(B)(ii); Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

18 Therefore, **IT IS HEREBY RECOMMENDED** that:

- 19 1. Pursuant to 28 U.S.C. § 1915A and 28 U.S.C. § 1915(e), this action be dismissed with  
20 prejudice for failure to state a claim upon which relief may be granted under § 1983;  
21 and  
22 2. The Clerk be directed to close this case.

23 These Findings and Recommendations will be submitted to the United States District  
24 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within

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26 <sup>1</sup> On January 21, 2020, Plaintiff’s claims against defendants Riverside County Superior  
27 Court, Mr. Miranda, and Riverside County Jail were severed from this case for lack of venue and  
28 transferred to the United States District Court for the Central District of California, to proceed as a separate  
civil action in that district. Plaintiff may not now bring additional claims in this case that should have  
been brought in the Central District.

1 **fourteen (14) days** from the date of service of these Findings and Recommendations, Plaintiff  
2 may file written objections with the Court. The document should be captioned “Objections to  
3 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file  
4 objections within the specified time may result in the waiver of rights on appeal. Wilkerson v.  
5 Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394  
6 (9th Cir. 1991)).

7  
8 IT IS SO ORDERED.

9 Dated: October 24, 2021

/s/ Gary S. Austin  
10 UNITED STATES MAGISTRATE JUDGE