

1 **I. Plaintiff’s Motion for Voluntary Dismissal**

2 Plaintiff requests that this Court dismiss Defendants Campbell and Hancock from this
3 action. Defendants Campbell and Hancock are not named in the first amended complaint.
4 Nonetheless, pursuant to Plaintiff’s request for voluntary dismissal, (Doc. 16), these defendants
5 are terminated from this action by operation of law without further order from the Court. Fed. R.
6 Civ. P. 41(a)(1)(A)(i).

7 **II. Screening Requirement and Standard**

8 The Court is required to screen complaints brought by prisoners seeking relief against a
9 governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C.
10 § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous
11 or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
12 relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b);
13 1915(e)(2)(B)(ii).

14 A complaint must contain “a short and plain statement of the claim showing that the
15 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
16 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
17 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
18 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as
19 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*,
20 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

21 To survive screening, Plaintiff’s claims must be facially plausible, which requires
22 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
23 for the misconduct alleged. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss v. U.S. Secret*
24 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant acted unlawfully
25 is not sufficient, and mere consistency with liability falls short of satisfying the plausibility
26 standard. *Iqbal*, 556 U.S. at 678 (quotation marks omitted); *Moss*, 572 F.3d at 969.

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1 **III. Plaintiff's Allegations**

2 Plaintiff is currently housed at Mule Creek State Prison in Ione, California. In his first
3 amended complaint, Plaintiff brings suit against Madera County Sheriff Tyson Pogue and the
4 Madera County Sheriff's Department. Plaintiff claims violations of 18 U.S.C. §§ 1018 and 241
5 and violations of the Fifth and Fourteenth Amendments to the United States Constitution.

6 Plaintiff alleges: On January 18, 2021, Plaintiff wrote a letter to Defendant Pogue.
7 Plaintiff requested that Defendant Pogue protect him because there was evidence housed in
8 Defendant Pogue's evidence locker. That evidence would show that two of Defendant Pogue's
9 officers planted evidence and that the two officers needed training so that they would never plant
10 evidence in another case.

11 Plaintiff asserts that Defendant Pogue, Sheriff of Madera County, makes and creates
12 policy within the Sheriff's Department. The policy surrounding evidence housed at the Sheriff's
13 Department reportedly states, "No officer shall discard, purge, or throw away any evidence
14 without an order to do so by the Superior Court of the County of Madera. Any evidence that is
15 housed at the Sheriff's department shall be logged [sic], and follow the proper chain of custody set
16 out by the Madera County Superior Courts rules of evidence." (Doc. 15 at 7.)

17 After Plaintiff notified Defendant Pogue of the lawsuit being filed surrounding evidence
18 housed at the Madera County Sheriff's Office, Plaintiff alleges that Defendant Pogue contacted
19 Lieutenant Robert Blehm "to conspire with, and to oppress, [Plaintiff] by asking Lieutenant
20 Robert Blehm to make all the evidence disappear." (*Id.*)

21 Plaintiff contends Lieutenant Blehm is the officer in control of the evidence locker room
22 at the Madera County Sheriff's Department. Lieutenant Blehm was ordered by Judge Bender of
23 the Madera County Superior Court to provide a declaration under penalty of perjury notifying the
24 court about evidence housed at the Sheriff's Department.

25 Plaintiff alleges that Lieutenant Blehm conspired with Sheriff Pogue to make all evidence
26 housed at the Sheriff's Department disappear. Lieutenant Blehm stated in his declaration, "While
27 the computer records indicate that we do retain some items of evidence. A physical search shows
28 that we in fact do not appear to have any physical evidence." (*Id.* at 8.) There are no records

1 indicating what happened to the evidence that was supposed to be housed at the Madera County
2 Sheriff's Department.

3 Plaintiff further alleges that Defendant Pogue used his position as the Sheriff of Madera
4 County to knowingly make false statements to deprive Plaintiff of due process and to conspire to
5 injure Plaintiff by making evidence disappear.

6 Plaintiff suggests that he would show a jury the following exhibits: (1) "an email sent to
7 Lieutenant Robert Blehm stating it would be in the best interest if the evidnece [sic] was not
8 provided to [Plaintiff]. In fact if the evidence was not located;" and (2) "the declaration
9 Lieutenant Robert Blehm signed under the penalty of perjury stating the evidence has
10 disappeared." (Doc. 15 at 8.) Plaintiff also suggests that he would provide evidence that the
11 evidence submitted to the Madera County Sheriff's Department disappeared under the watch of
12 Defendant Pogue and with Defendant Pogue's "direct knowledge of and intent to deprive
13 [Plaintiff] of rights and privileges secured to him by the Constitution and laws of the United
14 States." (*Id.*)

15 As additional exhibits, Plaintiff would show a jury that the Madera County Sheriff's
16 Department has a deliberate policy, custom, and practice that Defendant Pogue violated by
17 allowing the evidence housed at the Sheriff's Department to go missing, and that missing
18 evidence is the moving force behind the constitutional violation of Plaintiff's Fifth and Fourteenth
19 Amendments to the United States Constitution. Plaintiff also appears to suggest that he would
20 show a jury a deficient policy within the Madera County Sheriff's Department that allowed for
21 evidence to go missing.

22 Plaintiff asserts that Defendant Pogue took an oath to protect and serve all citizens.
23 However, Defendant Pogue implemented a new policy "to not have control over the evidence
24 housed at the Madera County Sheriff's Department, and to allow any officer to take and discard
25 what ever [evidence] they sit, for what ever reasons they choose to discard any evidence," which
26 does not protect Plaintiff's rights under the Fifth and Fourteenth Amendments to the United
27 States Constitution. (*Id.* at 9.) Plaintiff additionally asserts that Defendant Pogue acted under
28 color of state law to ensure that Plaintiff would not have access to evidence that was housed at the

1 Madera County Sheriff's Department. Plaintiff would provide, as exhibits, evidence logs to show
2 the jury that some items of evidence housed at the Sheriff's Department belonged to Plaintiff and
3 were taken from his home.

4 Plaintiff further alleges that Defendant Madera County Sheriff's Department has a
5 deliberate policy, custom and practice that Sheriff's deputies cannot discard evidence/property
6 housed at the Sheriff's Department without proper chain of custody and documentation generated
7 by the courts. Plaintiff reportedly provide Madera County Superior Court transcripts showing
8 that the Madera County District Attorney's Office did not ask for or submit to the Madera County
9 Sheriff's Department an order to discard, purge, or throw away an evidence/property housed at
10 the Madera County Sheriff's Department. Plaintiff will also show that the Madera County
11 Superior Court did not provide any destruction order to the defendants. According to Plaintiff,
12 defendants' action in allowing evidence to go missing is a violation of the policy, custom, and
13 practice.

14 As relief, Plaintiff seeks compensatory and punitive damages for violations of his
15 constitutional rights and retraining of officers working in the evidence room at the Madera
16 County Sheriff's Department.

17 **IV. Discussion**

18 **A. Heck Bar**

19 Plaintiff's damages action is premised on allegations that Defendant Pogue conspired with
20 Lieutenant Blehm to remove evidence from the Madera County Sheriff's Department evidence
21 locker. Plaintiff asserts that this deprived Plaintiff of his due process rights. Plaintiff's
22 allegations relate to a state superior court action involving the evidence, (*See* Doc. 15 at 7-8), and,
23 presumptively, to a criminal conviction, for which he seeks evidence to demonstrate that two
24 Madera County Sheriff's officers planted evidence against him, (*id.* at 7.).

25 As Plaintiff was previously informed, it has long been established that state prisoners
26 cannot challenge the fact or duration of their confinement in a section 1983 action and their sole
27 remedy lies in habeas corpus relief. *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005). Often referred
28 to as the favorable termination rule or the *Heck* bar, this exception to § 1983's otherwise broad

1 scope applies whenever state prisoners “seek to invalidate the duration of their confinement—either
2 directly through an injunction compelling speedier release or indirectly through a judicial
3 determination that necessarily implies the unlawfulness of the State’s custody.” *Wilkinson*, 544
4 U.S. at 81; *Heck v. Humphrey*, 512 U.S. 477, 482, 486–87 (1994); *Edwards v. Balisok*, 520 U.S.
5 641, 644 (1997). Thus, “a state prisoner’s § 1983 action is barred (absent prior invalidation)—no
6 matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit
7 (state conduct leading to conviction or internal prison proceedings)—if success in that action
8 would necessarily demonstrate the invalidity of confinement or its duration.” *Id.* at 81–82.

9 Successfully proceeding on his claims that Defendant Pogue and others conspired to
10 remove evidence allegedly planted by other officers, which resulted in a violation of Plaintiff’s
11 due process rights, necessarily would implicate the validity of Plaintiff’s underlying conviction.
12 A § 1983 action for damages will not lie where “establishing the basis for the damages claim
13 necessarily demonstrates the invalidity of the conviction.” *Heck*, 512 U.S. at 481–482. Plaintiff
14 may not pursue § 1983 damages for his claims until Plaintiff can prove “that the conviction or
15 sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a
16 state tribunal authorized to make such determination, or called into question by a federal court’s
17 issuance of a writ of habeas corpus.” *Id.* at 487; *see also Mogan v. Los Angeles Sheriff’s Dep’t*,
18 No. 2:18-cv-00276-JLS (SHK), 2018 WL 6185973, at *4 (C.D. Cal. Aug. 31, 2018) (finding it
19 possible that a judgment in favor of plaintiff regarding claims involving allegations about the
20 fabrication of evidence would undermine the validity of a conviction obtained based on the
21 falsification of plaintiff’s charges and fabrication of evidence against him); *Cooper v. Ramos*, 704
22 F.3d 772, 785 (9th Cir. 2012) (“Successfully litigating [plaintiff’s] claims of an evidence
23 tampering conspiracy would necessarily implicate the validity of his state criminal conviction.
24 These claims are not cognizable unless [plaintiff’s] conviction is vacated, overturned, or
25 invalidated.”), (citing *Heck*, 512 U.S. at 486-87)).

26 **B. Fifth Amendment**

27 Plaintiff alleges that defendants violated his due process rights under the Fifth and
28 Fourteenth Amendments. “[T]he Fifth Amendment’s due process clause applies only to the

1 federal government.” *Bingue v. Prunchak*, 512 F.3d 1169, 1174 (9th Cir. 2008). None of the
2 named defendants are federal government employees.

3 **C. Fourteenth Amendment**

4 “The Fourteenth Amendment’s Due Process Clause protects persons against deprivations
5 of life, liberty, or property; and those who seek to invoke its procedural protection must establish
6 that one of these interests is at stake.” *Wilkinson v. Austin*, 545 U.S. 209, 221 (2005). The due
7 process clause of the Fourteenth Amendment confers both substantive and procedural protections.
8 *Albright v. Oliver*, 510 U.S. 266, 272 (1994).

9 The substantive protections of the due process clause bar certain governmental actions
10 regardless of the fairness of the procedures that are used to implement them. *Cty. of Sacramento*
11 *v. Lewis*, 523 U.S. 833, 840 (1998). Therefore, the substantive protections of the due process
12 clause are intended to prevent government officials from abusing their power or employing it as
13 an instrument of oppression. *Lewis*, 523 U.S. at 846. The Supreme Court has held that “the
14 substantive component of the Due Process Clause is violated by executive action only when it
15 ‘can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense.’” *Id.*
16 at 847. “[O]nly the most egregious official conduct can be said to be arbitrary in a constitutional
17 sense.” *Brittain v. Hansen*, 451 F.3d 982, 991 (9th Cir. 2006) (quoting *Lewis*, 523 U.S. at 846).

18 “Substantive due process is ordinarily reserved for those rights that are ‘fundamental.’ ”
19 *Brittain*, 451 F.3d at 990. “The protections of substantive due process have for the most part been
20 accorded to matters relating to marriage, family, procreation, and the right to bodily integrity,”
21 and the Supreme Court has been reluctant to expand the concept of substantive due process.
22 *Albright*, 510 U.S. at 271-72. To state a substantive due process claim, a plaintiff must “show
23 both a deprivation of [his] liberty and conscience shocking behavior by the government.” *Brittain*,
24 451 F.3d at 991. Here, there is no indication that Plaintiff’s claims regarding missing evidence
25 are not being addressed by the superior court, which sought information directly from the Madera
26 County Sheriff’s Department.

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1 “The requirements of procedural due process apply only to the deprivation of interests
2 encompassed by the Fourteenth Amendment’s protection of liberty and property.” *Bd. of Regents*
3 *of State Colleges v. Roth*, 408 U.S. 564, 569–70 (1972). “[P]rocedural due process claims are
4 resolved by balancing tests, where differing interests can give rise to many differing procedural
5 requirements.” *Brittain*, 451 F.3d at 1000. “(D)ue process is flexible and calls for such procedural
6 protections as the particular situation demands.” *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976)
7 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). Plaintiff’s conclusory allegations are
8 insufficient to state a claim. There are no facts alleged by which it could reasonably be inferred
9 that Plaintiff has not received the process due from defendants. This is particularly true given the
10 Madera County Superior Court’s apparent involvement in Plaintiff’s assertions of missing
11 evidence.

12 **D. Madera County Sheriff’s Department**

13 “To state a claim under 42 U.S.C. § 1983, the plaintiff must allege two elements: (1) that a
14 right secured by the Constitution or laws of the United States was violated; and (2) that the
15 alleged violation was committed by a person acting under color of state law.” *Campbell v.*
16 *Washington Dep’t of Soc. Servs.*, 671 F.3d 837, 842 n. 5 (9th Cir. 2011) (citing *Ketchum v.*
17 *Alameda Cty.*, 811 F.2d 1243, 1245 (9th Cir.1987)).

18 The Court recognizes that there is a split within district courts in the Ninth Circuit on
19 whether a sheriff department is “person” under § 1983 and a proper defendant for § 1983 claims.
20 *See Siratsamy v. Sacramento Cty. Sheriff Dep’t*, No. 2:21-cv-0678-JAM-KJN PS, 2021 WL
21 2210711, at *4 (E.D. Cal. June 1, 2021) (noting split of authority on whether a California sheriff’s
22 department or police department is a “person” under § 1983 and a proper defendant for § 1983
23 claims); *Cantu v. Kings Cty.*, No. 1:20-cv-00538-NONE-SAB, 2021 WL 411111, at *1 (E.D. Cal.
24 Feb. 5, 2021) (discussing split within district courts in the Ninth Circuit on issue of whether a
25 sheriff’s department or police department is a separately suable entity). However, certain courts,
26 including the district judge assigned to this action, have found that a sheriff’s department or
27 police department may be sued as a “person” under § 1983. *See, e.g., Estate of Osuna v. Cty. of*
28 *Stanislaus*, 392 F.Supp.3d 1162, 1172 n. 2 (E.D. Cal. 2019) (concluding that sheriff’s departments

1 and police departments are “persons” within the meaning of § 1983); *Tennyson v. Cty. of*
2 *Sacramento*, No. 2:19-cv-00429-KJM-EFB, 2020 WL 4059568, at *6 (E.D. Cal. July. 20, 2020)
3 (finding Sheriff’s Department a properly named defendant in § 1983 action).

4 Under § 1983, a local government unit may not be held responsible for the acts of its
5 employees under a respondeat superior theory of liability. *Monell v. Dep’t of Soc. Servs. of Cty. of*
6 *New York*, 436 U.S. 658, 691 (1978). Generally, a claim against a local government unit for
7 municipal or county liability requires an allegation that “a deliberate policy, custom, or practice ...
8 was the ‘moving force’ behind the constitutional violation ... suffered.” *Galen v. Cty. of Los*
9 *Angeles*, 477 F.3d 652, 667 (9th Cir. 2007). Here, Plaintiff does not identify a policy, custom or
10 practice by the Madera County Sheriff’s Department that was the moving force behind any
11 alleged constitutional violations. Rather, Plaintiff identifies department policies prohibiting the
12 destruction or purge of evidence without an order from the Madera County Superior Court and
13 that prohibits sheriff’s deputies from discovery evidence without proper chain of custody and
14 documentation by the court. (Doc. 15 at 7, 10.) Plaintiff claims that Defendant Pogue violated
15 these policies and asserts that he would show a jury “that the Madera County Sheriff’s
16 Department has a [deliberate] policy, custom, and practice[] that Defendant Pogue violated by
17 allowing the evidence housed the Sheriff’s Department to go missing.” (*Id.* at 9.)

18 **E. Title 18, United States Code**

19 Plaintiff alleges violations of various provisions of Title 18, including 18 U.S.C. §§ 241,
20 1018. (*See* Doc. 15 at 4.) “[T]he fact that a federal statute has been violated and some person
21 harmed does not automatically give rise to a private cause of action in favor of that person.”
22 *Touche Ross & Co. v. Redington*, 442 U.S. 560, 568 (1979) (quoting *Cannon v. University of*
23 *Chicago*, 441 U.S. 677, 688 (1979)). Rather, the Court is to consider if Congress intended to
24 create the private right of action in the statute, looking first to the language of the statute. *Id.*
25 “Civil causes of action ... do not generally lie under the criminal statutes contained in Title 18 of
26 the United States Code.” *Del Elmer; Zachay v. Metzger*, 967 F. Supp. 398, 403 (S.D. Cal. 1997).

27 Plaintiff cannot bring suit against the defendants for violation of these section of Title 18.
28 The cited sections provide for fines or incarceration for criminal offenses. There is no language

1 in these sections that would imply a private right of action. *See Aldabe v. Aldabe*, 616 F.2d 1089,
2 1092 (9th Cir. 1980) (concluding criminal provision of 18 U.S.C. § 241 provides no basis for civil
3 liability).

4 **V. Conclusion and Recommendation**

5 Plaintiff's first amended complaint fails to state a cognizable claim for relief under section
6 1983. Despite being provided with relevant legal standards and being granted an opportunity to
7 amend his complaint, Plaintiff has been unable to cure the deficiencies. Further leave to amend is
8 not warranted. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

9 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed for failure
10 to state a cognizable claim upon which relief may be granted.

11 These Findings and Recommendation will be submitted to the United States District Judge
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen**
13 **(14) days** after being served with these Findings and Recommendation, Plaintiff may file written
14 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
15 Findings and Recommendation." Plaintiff is advised that failure to file objections within the
16 specified time may result in the waiver of the "right to challenge the magistrate's factual
17 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
18 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19
20 IT IS SO ORDERED.

21 Dated: June 21, 2022

22 /s/ Barbara A. McAuliffe
23 UNITED STATES MAGISTRATE JUDGE
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