



1 A complaint must contain “a short and plain statement of the claim showing that the  
2 pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
3 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
4 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
5 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). While a plaintiff’s allegations are taken as  
6 true, courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*,  
7 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted).

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

## 14 **II. Summary of Plaintiff’s Allegations**

15 Plaintiff’s first amended complaint does not have a caption and does not list any  
16 defendants by name. Plaintiff alleges as follows:

17 On April 19, 2019, Deputy Bailiff Harbour being by deliberately indifferent  
18 towards my physical, emotional, and mental well being by purposefully reading  
19 documentation in a trial setting that she is not supposed to and telling other Agents  
20 of the court what was in those documents and not saying her misconduct for over  
21 three days has caused physical damage to me by having extremely high blood  
22 pressure, becoming obese from depression, and inmates/detainees physically  
23 assaulting me over the past year when after any rights were violated for a fair trial I  
24 should have been free already enjoying life. By Deputy Bailiff Harbour being  
25 deliberately indifferent toward my mental health well being by her violating, I have  
26 wanted to commit suicide for months at a time because of such injustice in the  
27 American so called justice system, and emotionally by becoming easily agitated and  
28 crying for either thinking I am going to die in here or be abused even more than I  
have. By Deputy Bailiff Harbour being the on duty representation of the Sheriff has  
by her actions, by being deliberately indifferent toward me as the detainee/inmate  
has enacted and violated *Estelle v. Gumbel*, 1976 that specifically that that it is cruel  
and unusual punishment under the 8<sup>th</sup> Amendment when being detained or in a  
prison or jail setting being treat this way by prison/jail personnel. By Deputy Bailiff  
Harbor being the on duty jail personnel at my trial she is the one at fault for the  
deprivation of my right under the color of law at my trial and she had no immunities

1 when on duty and violated my rights while I was in my trial. [edited for spelling]

2 As remedies, Plaintiff seeks compensatory and punitive damages and criminal prosecution of  
3 Deputy Bailiff Harbour.

4 **III. Discussion**

5 Despite being provided the relevant legal and pleading standards in the case, Plaintiff has  
6 been unable to cure the deficiencies.

7 **A. Federal Rule of Civil Procedure 8**

8 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain  
9 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed  
10 factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
11 supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citation  
12 omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to  
13 relief that is plausible on its face.’ ” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570,  
14 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are not. *Id.*;  
15 see also *Twombly*, 550 U.S. at 556–557.

16 Although Plaintiff’s complaint is short, it is not a plain statement of his claims. As a basic  
17 matter, the complaint does not clearly allege what happened. As Plaintiff was informed, Plaintiff  
18 must state sufficient factual support for each claim. Plaintiff was informed that if he filed an  
19 amended complaint, it should be a short and plain statement of his claims, and must include  
20 factual allegations identifying what happened, when it happened and who was involved. Fed. R.  
21 Civ. P. 8. Plaintiff has been unable to cure this deficiency.

22 **B. Federal Rule of Civil Procedure 10**

23 The complaint’s caption must contain the names of the defendants discussed in the body of  
24 the complaint. See Fed. R. Civ. P. 10(a) (Rule 10(a) requires that plaintiffs include the names of  
25 all parties in the caption of the complaint). The Court cannot have the complaint served on any of  
26 the parties discussed in the body of the Complaint. *See Soto v. Bd. of Prison Term*, No. CIV S-06-  
27 2502 RRB DAD P, 2007 WL 2947573, at \*2 (E.D. Cal. Oct. 9, 2007) (The Court cannot order  
28 service of the Complaint without the names of the parties included in the caption of the

1 Complaint). Rule 10 of the Federal Rules of Civil Procedure requires, among other things, that a  
2 complaint (a) state the names of “all the parties” in the caption; and (b) state a party's claims in  
3 sequentially “numbered paragraphs, each limited as far as practicable to a single set of  
4 circumstances.” Fed. R. Civ. P. 10; *Callahan v. Unknown*, No. 1:22-CV 00221 BAM PC, 2022  
5 WL 1215260, at \*3 (E.D. Cal. Apr. 25, 2022), report and recommendation adopted, No. 1:22-CV-  
6 221 JLT BAM, 2022 WL 1782559 (E.D. Cal. June 1, 2022); *Thomas v. Weaver*, No. 1:22-CV-  
7 01492-BAM, 2022 WL 17822132, at \*3 (E.D. Cal. Dec. 20, 2022) (same).

8 Plaintiff’s first amended complaint fails to comply with Rule 10, but it appears he intends  
9 to name as the sole defendant, Deputy Bailiff Harbour. In light of Plaintiff’s pro se status, the  
10 Court will screen the complaint as to Defendant Deputy Bailiff Harbour.

11 **C. Heck Bar**

12 Plaintiff may be attempting to challenge events of his conviction. It has long been  
13 established that state prisoners cannot challenge the fact or duration of their confinement in a  
14 section 1983 action and their sole remedy lies in habeas corpus relief. *Wilkinson v. Dotson*, 544  
15 U.S. 74, 78 (2005). Often referred to as the favorable termination rule or the *Heck* bar, this  
16 exception to § 1983’s otherwise broad scope applies whenever state prisoners “seek to invalidate  
17 the duration of their confinement—either directly through an injunction compelling speedier  
18 release or indirectly through a judicial determination that necessarily implies the unlawfulness of  
19 the State's custody.” *Wilkinson*, 544 U.S. at 81; *Heck v. Humphrey*, 512 U.S. 477, 482, 486–87  
20 (1994); *Edwards v. Balisok*, 520 U.S. 641, 644 (1997). Thus, “a state prisoner's § 1983 action is  
21 barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no  
22 matter the target of the prisoner's suit (state conduct leading to conviction or internal prison  
23 proceedings)—if success in that action would necessarily demonstrate the invalidity of  
24 confinement or its duration.” *Id.* at 81–82.

25 Plaintiff's damages allegations implicate the validity of his conviction. However, Plaintiff  
26 may not pursue § 1983 damages for his claims until Plaintiff can prove “that the conviction or  
27 sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a  
28 state tribunal authorized to make such determination, or called into question by a federal court's

1 issuance of a writ of habeas corpus.” *Heck*, 512 U.S. at 487.

2 **D. Habeas Corpus**

3 To the extent that Plaintiff is attempting to challenge the validity of his conviction, the  
4 duration of conviction, or his incarceration, the exclusive method for asserting that challenge is  
5 by filing a petition for writ of habeas corpus. As stated above, state prisoners cannot challenge the  
6 fact or duration of their confinement in a § 1983 action, and their sole remedy lies in habeas  
7 corpus relief. *Wilkinson*, 544 U.S. at 78 (“[A] prisoner in state custody cannot use a § 1983 action  
8 to challenge the fact or duration of his confinement. He must seek federal habeas corpus relief (or  
9 appropriate state relief) instead.”).

10 **E. Criminal Prosecution**

11 Plaintiff seeks criminal prosecution of Defendant Deputy Bailiff Harbour. As a private  
12 citizen, Plaintiff has no authority to criminally prosecute anyone. *Turner v. Salorio*, No. 1:19-cv-  
13 01620-DAD-BAM (PC), 2020 WL 1974207, at \*3 (E.D. Cal. Apr. 24, 2020); *Smith v. Scott*, No.  
14 1:21-CV-1614 DAD BAM, 2022 WL 1228781, at \*3 (E.D. Cal. Apr. 26, 2022), report and  
15 recommendation adopted, No. 1:21-CV-01614 DAD BAM, 2022 WL 1665170 (E.D. Cal. May  
16 25, 2022). This defect cannot be cured.

17 **F. Sixth Amendment**

18 A Section 1983 claim for violation of the Sixth Amendment rights during trial is not  
19 properly brought where the plaintiff has not shown that his conviction has been invalidated.  
20 *Trimble v. City of Santa Rose*, 49 F.3d 583, 585 (9th Cir. 2004) (citing *Heck v. Humphrey*, 512  
21 U.S. 477, 486-87 (1944)).

22 **G. Eighth Amendment**

23 Plaintiff alleges that defendants violated his rights under the Eighth Amendment by the  
24 trial violation. The Eighth Amendment prohibits excessive bail, fines or cruel and unusual  
25 punishment. U.S. Const. amend. VII. These protections were designed to protect those convicted  
26 of crimes. *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979); *Ingraham v. Wright*, 430 U.S. 651, 671  
27 n.40 (1977) (The Eighth Amendment applies “only after the State has complied with the  
28 constitutional guarantees traditionally associated with criminal prosecutions.”). Plaintiff’s

1 complaint includes no factual allegations indicating that he is entitled to Eighth Amendment  
2 protections as he is challenging pre-conviction conduct.

### 3 **H. Due Process**

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). A violation  
7 of the Fourteenth Amendment is not properly brought where the plaintiff has not shown that his  
8 conviction has been invalidated. Moreover, it appears from the limited allegations that the  
9 purported wrongful conduct is “purposefully reading documentation in a trial setting that she is  
10 not supposed to and telling other Agents of the court what was in those documents and not saying  
11 her misconduct for over three days.” Any such Due Process claim arising from the fairness of  
12 Plaintiff’s criminal trial resulting in his conviction cannot be brought in a §1983 case.

### 13 **I. State Law Claims**

14 To the extent Plaintiff is attempting to assert state law claims, the Court declines to  
15 screen them in the absence of a cognizable claim for relief under federal law. Under 28 U.S.C. §  
16 1367(a), in any civil action in which the district court has original jurisdiction, the “district courts  
17 shall have supplemental jurisdiction over all other claims that are so related to claims in the  
18 action within such original jurisdiction that they form part of the same case or controversy under  
19 Article III of the United States Constitution,” except as provided in subsections (b) and (c). The  
20 Supreme Court has stated that “if the federal claims are dismissed before trial, ... the state claims  
21 should be dismissed as well.” *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966).  
22 Although the Court may exercise supplemental jurisdiction over state law claims, Plaintiff must  
23 first have a cognizable claim for relief under federal law. 28 U.S.C. § 1367.

### 24 **IV. Conclusion and Recommendation**

25 For the reasons discussed, the Court finds that Plaintiff has failed to state a cognizable  
26 claim for relief. Despite being provided with the relevant legal standards, Plaintiff has been  
27 unable to cure the deficiencies in his complaint. Further leave to amend is not warranted. *Lopez*  
28 *v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

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Accordingly, the Court HEREBY DIRECTS the Clerk of the Court to randomly assign a district judge to this action.

Further, for the reasons stated above, IT IS HEREBY RECOMMENDED that this action be dismissed for failure to state a cognizable claim upon which relief may be granted.

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

IT IS SO ORDERED.

Dated: January 13, 2023

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE