

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cuellar v. The Madera County Sheriff Jail Division, et al.

Cuellar v. The Madera County Sheriff Jail Division, No. 1:25-cv-00301-EPG (PC) (E.D. Cal. May 27, 2025) ·
No. 1:25-cv-00301-EPG (PC) · Decided May 27, 2025

SUMMARY

The court recommends dismissing Travis Justin Cuellar’s pro se § 1983 action against the Madera County Sheriff Jail Division, Homewav, and Doe defendants. The recommendations conclude that Cuellar failed to allege personal injury, a proper municipal defendant, state action by Homewav, or a viable due process claim, and also failed to prosecute the case or comply with a screening order. The court recommends dismissal with prejudice and advises that objections may be filed within thirty days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 27, 2025
DOCKET	1:25-cv-00301-EPG (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A pro se prisoner proceeding in forma pauperis filed a 42 U.S.C. § 1983 complaint, purportedly as a class action. After screening the complaint, the magistrate judge found no cognizable claims, ordered Plaintiff to amend or stand on the complaint, and recommended dismissal with prejudice after Plaintiff failed to respond.
STANDARD OF REVIEW	The complaint was screened under 28 U.S.C. §§ 1915A and 1915(e) (2)(B), applying the Rule 8 and plausibility standards. Dismissal for failure to prosecute or failure to comply with a court order was evaluated under the five-factor test requiring consideration of expeditious resolution, docket management, prejudice, lesser sanctions, and the policy favoring disposition on the merits.
PRECEDENTIAL VALUE	unknown; findings and recommendations from a federal district court magistrate judge, with no reporter citation or precedential designation stated

PARTIES

Travis Justin Cuellar v. The Madera County Sheriff Jail Division,
Homewav, Does 1-1000

TOPICS

prisoners rights

section 1983

due process

class actions

civil procedure

PRACTICE AREAS

prisoner civil rights

federal civil procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the complaint stated a cognizable claim under 42 U.S.C. § 1983.
2. Whether Plaintiff had standing to assert claims on behalf of his loved ones and other inmates when he did not allege a personal injury.
3. Whether the Madera County Jail was a proper defendant or was sufficiently connected to the alleged conduct under § 1983.
4. Whether Homewav was alleged to have acted under color of state law merely because it contracted with the Jail.
5. Whether the complaint alleged a constitutional due process violation based on allegedly unauthorized charges for unsolicited video calls.
6. Whether dismissal was warranted for failure to prosecute and failure to comply with the court's screening order.

HOLDINGS

1. Plaintiff could not pursue claims belonging to his loved ones or other inmates because he did not allege that he personally suffered the alleged financial injury, and a pro se litigant may not represent other persons in a class action.
2. The Madera County Jail was not a proper § 1983 defendant, and the complaint did not allege specific facts showing that the Jail caused the alleged video calls or participated in a constitutional conspiracy.
3. The complaint failed to state a § 1983 claim against Homewav because contracting with the Jail to provide video services, without more, did not establish that Homewav acted under color of state law.
4. Plaintiff failed to state a due process claim because he did not allege that he personally was deprived of property, did not allege an authorized deprivation pursuant to established state procedure, and did not identify personal participation by a defendant.
5. Dismissal was appropriate under the applicable five-factor analysis because Plaintiff failed to respond to the screening order despite a warning that noncompliance could result in dismissal.

KEY QUOTATIONS

“The ordinary rule . . . is that a party must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” (at 3)

“Generally, a private business has no authority to act under color of state law; however, such action can be deemed to be under color of law if there is a sufficient connection between the business entity and the state.” (at 7)

“In determining whether to dismiss a[n] [action] for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” (at 9)

FACTUAL BACKGROUND

Plaintiff, a pretrial detainee at the Madera County Jail, alleged that the Jail and Homewav, a private remote-video-visit provider, caused video-call accounts to automatically call inmates' loved ones without the inmates initiating the calls. According to the complaint, recipients were charged approximately two dollars for silent calls, and Plaintiff characterized the arrangement as a scheme to obtain money. Plaintiff did not allege that he personally paid for any such call or identify a specific person at the Jail responsible for the calls.

PROCEDURAL HISTORY

Plaintiff filed the complaint on March 12, 2025. On April 8, 2025, the court screened the complaint, concluded that it failed to state a cognizable claim, and gave Plaintiff thirty days to file an amended complaint or notify the court that he would stand on the original complaint. Plaintiff did neither, and the magistrate judge recommended dismissal with prejudice for failure to state a claim, failure to prosecute, and failure to comply with a court order. The clerk was directed to assign a district judge, and objections were permitted within thirty days.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 676-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 566, 570 (2007)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Graham v. Connor, 490 U.S. 386, 393-94 (1989)
- Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)
- Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 618 (1979)
- Hall v. City of Los Angeles, 697 F.3d 1059, 1068 (9th Cir. 2012)
- Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012)

- *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006)
- *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006)
- *Marsh v. County of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012)
- *Preschooler II v. Clark County School Board of Trustees*, 479 F.3d 1175, 1183 (9th Cir. 2007)
- *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)
- *Arnold v. International Business Machines Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981)
- *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008)
- *Tingley v. Ferguson*, 47 F.4th 1055, 1069 (9th Cir. 2022)
- *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987)
- *Abel v. Alameda County*, No. C 07-3247 MJJ (PR), 2007 WL 3022252, at *1 (N.D. Cal. Oct. 13, 2007)
- *Perez v. Woodford*, No. C 01-2605 TEH (PR), 2001 WL 1180647, at *1 (N.D. Cal. Oct. 2, 2001)
- *Monell v. Department of Social Services of City of New York*, 436 U.S. 658, 691, 695 (1978)
- *Jay v. Medical Department of Fresno County Jail*, No. 1:10-CV-00685-GBC PC, 2011 WL 3875523, at *4 (E.D. Cal. Sept. 1, 2011)
- *Gatlin v. Bank of America*, No. 2:23-CV-0272-DAD-KJN P, 2023 WL 2529725, at *2 (E.D. Cal. Mar. 15, 2023)
- *Burns v. County of King*, 883 F.2d 819, 821 (9th Cir. 1989)
- *Mistriel v. Kern County*, No. 1:03-CV-06922-AWI, 2011 WL 864495, at *9 (E.D. Cal. Mar. 10, 2011)
- *Brooks v. SecurusTech.net*, No. 13-CV-4646 JS AKT, 2014 WL 737683, at *6 (E.D.N.Y. Feb. 24, 2014)
- *Whitaker v. Director, TDCJ-CID*, No. 9:11-CV-68, 2013 WL 2318889, at *15 (E.D. Tex. May 27, 2013)
- *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974)
- *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974)
- *Bell v. Wolfish*, 441 U.S. 520, 545 (1979)
- *Daniels v. Williams*, 474 U.S. 327, 328 (1986)
- *Hudson v. Palmer*, 468 U.S. 517, 532-33 & n.13 (1984)
- *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-36 (1982)
- *Quick v. Jones*, 754 F.2d 1521, 1524 (9th Cir. 1985)
- *Barnett v. Centoni*, 31 F.3d 813, 816-17 (9th Cir. 1994)
- *Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir. 2002)
- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *Yourish v. California Amplifier*, 191 F.3d 983, 990-91 (9th Cir. 1999)
- *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014)
- *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8
9 TRAVIS JUSTIN CUELLAR, Case No. 1:25-cv-00301-EPG (PC) 10 Plaintiff, ORDER TO

ASSIGN A DISTRICT JUDGE 11 v. FINDINGS AND RECOMMENDATIONS, 12 THE
MADERA COUNTY SHERIFF JAIL RECOMMENDING THAT THIS ACTION DIVISION, et
al., BE DISMISSED FOR FAILURE TO STATE 13 A CLAIM, FAILURE TO PROSECUTE,
Defendants.

AND FAILURE TO COMPLY WITH A 14 COURT ORDER 15 (ECF Nos. 1, 7). 16
OBJECTIONS, IF ANY, DUE WITHIN THIRTY DAYS 17 18 Plaintiff Travis Justin Cuellar, an
inmate at the Madera County Jail, proceeds pro se and 19 in forma pauperis in this civil rights
action filed under 42 U.S.C. § 1983. (ECF Nos. 1, 6). 20 Plaintiff filed his complaint on March 12,
2025, bringing a purported class action on behalf of 21 himself and inmates at the Madera County
Jail.

Generally, he alleges that the Madera County 22 Jail and a private company named Homwav, who
provides remote video services, are 23 connecting calls to inmates' loved ones without the inmate
initiating the call. 24 On April 8, 2025, the Court screened the complaint and concluded that
Plaintiff failed 25 to state any cognizable claims. (ECF No. 7).

The Court gave Plaintiff thirty days to file an 26 amended complaint or to notify the Court that he
wanted to stand on his complaint. (Id. at 10). 27 And the Court warned Plaintiff that “[f]ailure to
comply with this order may result in the 28 dismissal of this action.” (Id. at 11). 1 The thirty-day
deadline has passed, and Plaintiff has not filed an amended complaint or 2 otherwise responded to
the Court’s order.

Accordingly, for the reasons given below, the Court 3 will recommend that Plaintiff’s case be
dismissed, with prejudice, for failure to state a claim, 4 failure to prosecute, and failure to comply
with a court order. 5 I. SCREENING REQUIREMENT 6 The Court is required to screen
complaints brought by prisoners seeking relief against a 7 governmental entity or officer or
employee of a governmental entity.

28 U.S.C. § 1915A(a). 8 The Court must dismiss a complaint, or a portion of it, if the prisoner has
raised claims that are 9 frivolous or malicious, that fail to state a claim upon which relief may be
granted, or that seek 10 monetary relief from a defendant who is immune from such relief. 28
U.S.C. § 1915A(b)(1), 11 (2). Additionally, as Plaintiff is proceeding in forma pauperis (ECF No.
6), the Court may 12 screen the complaint under 28 U.S.C. § 1915. “Notwithstanding any filing
fee, or any portion 13 thereof, that may have been paid, the court shall dismiss the case at any time
if the court 14 determines that the action or appeal fails to state a claim upon which relief may be
granted.” 15 28 U.S.C. § 1915(e)(2)(B)(ii).

16 A complaint is required to contain “a short and plain statement of the claim showing 17 that the
pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not 18
required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere 19

conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell 20 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

A plaintiff must set forth “sufficient 21 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* 22 (quoting *Twombly*, 550 U.S. at 570). The mere possibility of misconduct falls short of meeting 23 this plausibility standard. *Id.* at 679. While a plaintiff’s allegations are taken as true, courts 24 “are not required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 25 677, 681 (9th Cir.

2009) (citation and internal quotation marks omitted). Additionally, a 26 plaintiff’s legal conclusions are not accepted as true. *Iqbal*, 556 U.S. at 678. 27 Pleadings of pro se plaintiffs “must be held to less stringent standards than formal 28 pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (holding that 1 pro se complaints should continue to be liberally construed after *Iqbal*).

2 II. SUMMARY OF PLAINTIFF’S COMPLAINT 3 Plaintiff’s complaint asserts that he is a pretrial detainee at the Madera County Jail. He 4 seeks to bring a class action civil rights case on behalf of his fellow inmates at the Jail, with “an 5 approximate population of 500” persons.¹ He sues two named Defendants: (1) “The Madera 6 County Sheriff Jail Division (The Jail)”; and (2) Homewav, which he describes as “the Jail’s 7 remote video visit company,” which contracts with the Jail.

8 Plaintiff also sues unnamed Doe Defendants (“Does 1-1000”) stating that he will 9 identify them during discovery. 10 Plaintiff’s complaint is two pages² and contains the following allegations: 11 All Defendants have violated Plaintiffs’ right to due process of law by conducting a scheme with each other which consists of Plaintiffs’ Homewav 12 visit accounts automatically calling their loved ones as registered visitors on each Plaintiff’s Homewav account which dials an incoming visit to Plaintiffs’ 13 loved ones without Plaintiffs making the call.

Plaintiffs’ loved ones answer the 14 incoming visit which remains silent and without video until Plaintiffs’ loved ones decide to hang up. Each call charges approx. two dollars but fluctuates 15 depending on how long Plaintiffs’ loved ones stay on the call believing some 16 sort of technical issue is preventing Plaintiffs from being seen or heard. This scheme is racketeering funds.

The Jail is liable because the Jail has contract[ed] 17 with Homewav. Homewav is liable because Homewav has contract[ed] with [the] Jail. Both parties refuse to fix or address the issue. Both parties are aware 18 of the issue as Plaintiff has exhausted available remedies at the Jail, and 19 Plaintiffs’ loved ones [have] been denied relief by Homewav.

As for relief, Plaintiff seeks reimbursement for the calls, \$100,000 in (presumably 20 general) damages, and \$100,000 in punitive damages. 21 III. ANALYSIS OF PLAINTIFF’S COMPLAINT 22 A. Section 1983 23 The Civil Rights Act under which this action was filed provides as follows:

24 Every person who, under color of any statute, ordinance, regulation, custom, or 25 usage, of any State or Territory or the District of Columbia, subjects, or causes 26 27 1 For readability, minor alterations, like changing capitalization, have been made to some of Plaintiff's quotations without indicating each change.

28 2 Plaintiff's complaint is not on the Court's standard complaint form and does not include several items of information, such as a list of previous lawsuits that Plaintiff has filed. to be subjected, any citizen of the United States or other person within the 1 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 2 action at law, suit in equity, or other proper proceeding for redress....

3 42 U.S.C. § 1983. “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely 4 provides ‘a method for vindicating federal rights elsewhere conferred.’” *Graham v. Connor*, 5 490 U.S. 386, 393-94 (1989) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)); see 6 also *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 618 (1979); *Hall v. City of Los Angeles*, 697 F.3d 1059, 1068 (9th Cir.

2012); *Crowley v. Nevada*, 678 F.3d 730, 734 (9th Cir. 8 2012); *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006). 9 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under 10 color of state law, and (2) the defendant deprived him of rights secured by the Constitution or 11 federal law. *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir.

2006); see also 12 *Marsh v. County of San Diego*, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing “under color of 13 state law”). A person deprives another of a constitutional right, “within the meaning of § 1983, 14 ‘if he does an affirmative act, participates in another’s affirmative act, or omits to perform an 15 act which he is legally required to do that causes the deprivation of which complaint is 16 made.’” *Preschooler II v. Clark County Sch.*

Bd. of Trs., 479 F.3d 1175, 1183 (9th Cir. 2007) 17 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite causal connection 18 may be established when an official sets in motion a ‘series of acts by others which the actor 19 knows or reasonably should know would cause others to inflict’ constitutional 20 harms.” *Preschooler II*, 479 F.3d at 1183 (quoting *Johnson*, 588 F.2d at 743).

This standard of 21 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.” 22 *Arnold v. Int’l Bus. Mach. Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981); see also *Harper v. City 23 of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). 24 A plaintiff must demonstrate that each named defendant personally participated in the 25 deprivation of his rights.

Iqbal, 556 U.S. at 676-77. In other words, there must be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by the plaintiff. See *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691, 695 (1978). 1 B. No Personal Injury 2 As an initial matter, Plaintiff's complaint is subject to dismissal to the extent it asserts 3 claims on behalf of others, including Plaintiff's family members and other inmates.

Plaintiff 4 does not allege that he was personally injured by having to pay for video calls he did not 5 actually place. 6 "The ordinary rule... is that a party must assert his own legal rights and interests, and 7 cannot rest his claim to relief on the legal rights or interests of third parties." *Tingley v. Ferguson*, 47 F.4th 1055, 1069 (9th Cir. 2022) (internal quotation marks and citation omitted).

9 Here, Plaintiff does not claim that he is the one who suffered any harm—e.g., that he 10 had to pay for the improper calls. For example, he does not allege that on any given date he was 11 charged for a video call that he did not make. Instead, he appears to allege that his "loved ones" 12 were improperly charged for calls that he did not place.

The complaint states that his "loved 13 ones" answer a call and eventually decide to hang up, each call charges approximately two 14 dollars but fluctuates depending on how long the "loved ones" stay on the call. And such 15 "loved ones [have] been denied relief by Homewav." 16 Plaintiff cannot bring a claim on behalf of any third parties, including his loved ones.

If 17 those individuals have been injured by being improperly charged for video calls, they must 18 bring their own claims. However, Plaintiff cannot assert a claim unless his own interests are 19 involved. 20 Similarly, Plaintiff cannot bring claims on behalf of other inmates at the Madera County 21 Jail. Plaintiff's complaint states that it is being brought on behalf of "all other inmates of the 22 Madera County Jail consisting of pretrial detainees and convicted prisoners of an approximate 23 population of 500." (ECF No. 1, at p. 1).

But, as described above, Plaintiff cannot bring claims 24 on behalf of any third party, including other detainees at the Madera County Jail. 25 Plaintiff also cannot bring a class action lawsuit on behalf of anyone else. Federal Rule 26 of Civil Procedure 23(g) requires "a court that certifies a class [to] appoint class counsel." A 27 pro se plaintiff, like Plaintiff in this case, can only represent his own interests, not those of 28 other inmates in a class action.

See *C.E. Pope Equity Tr. v. United States*, 818 F.2d 696, 697 1 (9th Cir. 1987) ("Although a non-attorney may appear in propria persona in his own behalf, 2 that privilege is personal to him. He has no authority to appear as an attorney for others than 3 himself."); *Abel v. Alameda Cnty.*, No. C 07-3247 MJJ (PR), 2007 WL 3022252, at *1 (N.D. 4 Cal. Oct. 13, 2007) ("Pro se prisoner plaintiffs may not bring class actions."); *Perez v. Woodford*, No. C 01-2605 TEH (PR), 2001 WL 1180647, at *1 (N.D.

Cal. Oct. 2, 2001) 6 (“Perez purports to bring this action as a class action but he cannot file a class action on behalf 7 of other prisoners pro se.”). 8 Thus, Plaintiff’s complaint is subject to dismissal because it brings claims on behalf of 9 other persons, including Plaintiff’s loved ones and other inmates, and does not allege that 10 Plaintiff himself suffered any personal injury.

11 C. The Madera County Jail 12 Plaintiff’s claims against the Madera County Jail are also subject to dismissal because 13 Madera County Jail is not a “person” under the relevant statute and because Plaintiff has not 14 alleged specific facts that it was responsible for the improperly placed calls. 15 Plaintiff brings this lawsuit under 42 U.S.C. §1983 which states that, 16 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes 17 to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities 18 secured by the Constitution and laws, shall be liable to the party injured in an 19 action at law...

20 42 U.S.C. §1983. “The term ‘persons’ encompasses state and local officials sued in their 21 individual capacities, private individuals, and entities which act under the color of state law and 22 local governmental entities.” Jay v. Med. Dep’t of Fresno Cnty. Jail, No. 1:10-CV-00685-GBC 23 PC, 2011 WL 3875523, at *4 (E.D. Cal. Sept. 1, 2011).

However, “municipal departments and 24 sub-units of local governments are not generally considered ‘persons’ within the meaning of 25 Section 1983.” Id. (collecting cases dismissing correctional facilities and law enforcement 26 departments as improper defendants under § 1983). 27 Here, Plaintiff does not name any person or individual at the Madera County Jail 28 responsible for the video calls.

Instead, Plaintiff names the Jail itself. However, the Madera 1 County Jail is not a properly named Defendant under § 1983. See Gatlin v. Bank of Am., No. 2 2:23-CV-0272-DAD-KJN P, 2023 WL 2529725, at *2 (E.D. Cal. Mar. 15, 2023) (“Turning to 3 plaintiff’s claim against defendant Sacramento County Jail, an agency or department of a 4 municipal entity is not a proper defendant under Section 1983.”).

5 Moreover, Plaintiff does not allege any facts indicating that the Madera County Jail 6 caused the misplaced calls. Instead, Plaintiff alleges that there was a “scheme with each other,” 7 and that the “Jail is liable because the Jail has contract with Homewav.” These allegations are 8 not sufficient to show that the Madera County Jail caused the misplaced video calls.

9 “[C]onclusory allegations” are insufficient to support a conspiracy claim; rather, “[t]o state a 10 claim for a conspiracy to violate one’s constitutional rights under section 1983, the plaintiff 11 must state specific facts to support the existence of the claimed conspiracy.” Burns v. Cnty. of 12 King, 883 F.2d 819, 821 (9th Cir. 1989). 13 Notably, Plaintiff provides no specific facts that this

contract, or any other agreement, 14 involves a scheme to obtain money via unsolicited phone calls.

And his conclusory allegations 15 about Defendants having a contract is not sufficient to establish a conspiracy. See *Twombly*, 16 550 U.S. at 566 (noting allegations that defendants “have entered into a contract, combination 17 or conspiracy,” but concluding that “nothing contained in the complaint invests either the 18 action or inaction alleged with a plausible suggestion of conspiracy”).

19 Thus, Plaintiff’s claims against the Madera County Jail should be dismissed. 20 *D. Homewav*
21 Plaintiff’s § 1983 claims against Homewav are also subject to dismissal because 22 Plaintiff has not alleged facts indicating that Homewav was acting “under color of state law.” 23 “To state a section 1983 claim, a plaintiff must allege facts which show a deprivation of 24 a right, privilege or immunity secured by the Constitution or federal law by a person acting 25 under color of state law.” *Lopez v. Dep’t of Health Servs.*, 939 F.2d 881, 883 (9th Cir.

1991) 26 (emphasis added); *Davis v. John*, 485 F. Supp. 3d 1207, 1216 (C.D. Cal. 2020) (“It is axiomatic 27 that a plaintiff asserting a section 1983 claim must allege that the defendant acted under color 28 of state law when performing the challenged acts.”). “Generally, a private business has no 1 authority to act under color of state law; however, such action can be deemed to be under color 2 of law if there is a sufficient connection between the business entity and the state.” *Mistriel v. 3 Kern Cnty.*, No. 1:03-CV-06922-AWI, 2011 WL 864495, at *9 (E.D.

Cal. Mar. 10, 2011), 4 report and recommendation adopted, No. 1:03-CV-06922-AWI, 2011 WL 2192834 (E.D. Cal. 5 June 6, 2011). 6 Here, by all indications, Homewav is a private company and not a state actor. And as 7 other courts have concluded in analogous circumstances, just because Homewav contracts with 8 the Jail, presumably for video services, does not transform it into a state actor.

See *Brooks v. 9 SecurusTech.net*, No. 13-CV-4646 JS AKT, 2014 WL 737683, at *6 (E.D.N.Y. Feb. 24, 2014) 10 (collecting cases on this issue, and noting that telephone service provider was “not a state actor, 11 or acting under color of state law, merely by virtue of its public contract with the Suffolk Jail”); 12 *Whitaker v. Director, TDCJ-CID*, No. 9:11-CV-68, 2013 WL 2318889, at *15 (E.D.

Tex. May 13 27, 2013) (order adopting findings and recommendations, noting that the fact that provider of 14 telephone services “ha[d] contracted with the Texas Department of Criminal Justice to provide 15 telephone services to prisoners does not make [it] or any of its employees state actors”). 16 E. Due Process 17 Finally, Plaintiff’s complaint is subject to dismissal because it has not alleged facts 18 indicating a constitutional violation of the Due Process clause.

19 The Due Process Clause protects inmates from being deprived of property without due 20 process of law, *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974), and inmates have a protected 21 interest in their personal property, *Hansen v. May*, 502 F.2d 728, 730 (9th Cir. 1974). See also 22 *Bell v. Wolfish*, 441 U.S. 520, 545 (1979) (noting that due process protections apply to pretrial 23 detainees). “[T]he Due Process Clause is... not implicated by a negligent act of an official 24 causing unintended loss of or injury to... property.” *Daniels v. Williams*, 474 U.S. 327, 328 25 (1986).

Authorized intentional deprivation of property pursuant to an established state 26 procedure is actionable under the Due Process Clause. *Hudson v. Palmer*, 468 U.S. 517, 532 & 27 n.13 (1984) (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435-36 (1982)); *Quick v. 28 Jones*, 754 F.2d 1521, 1524 (9th Cir. 1985).

On the other hand, “an unauthorized intentional 1 deprivation of property by a state employee does not constitute a violation of the procedural 2 requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful 3 postdeprivation remedy for the loss is available.” *Hudson*, 468 U.S. at 533. And “California 4 law provides an adequate post-deprivation remedy for any property deprivations.” *Barnett v. 5 Centoni*, 31 F.3d 813, 816-17 (9th Cir.

1994) (citing Cal. Gov’t Code §§ 810-95). Furthermore, 6 a plaintiff must also demonstrate that each named defendant personally participated in the 7 deprivation of his rights. *Iqbal*, 556 U.S. at 676-77. 8 Plaintiff’s allegations are insufficient to state a due process claim. His essential 9 contention is that Defendants are causing unsolicited video calls to be placed.

But, as described 10 above, Plaintiff does not allege that he specifically was deprived of his property by being 11 improperly charged for such calls. 12 Moreover, even assuming that there are allegations that could implicate a deprivation of 13 property, Plaintiff fails to allege that such actions amount to an authorized deprivation of his 14 property pursuant to an established state procedure.

On the contrary, such allegations indicate 15 an unauthorized deprivation of property. 16 Thus, Plaintiff fails to state any due process claim. 17 IV. FAILURE TO PROSECUTE AND COMPLY WITH COURT ORDERS 18 The Court will likewise recommend dismissal based on Plaintiff’s failure to prosecute 19 this case and to comply with the Court’s screening order. 20 In determining whether to dismiss a[n] [action] for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the 21 public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the 22 availability of less drastic alternatives; and (5) the public policy favoring 23 disposition of cases on their merits.

24 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 25 1258, 1260-61 (9th Cir. 1992)). 26 “‘The public’s interest in expeditious resolution of litigation always favors dismissal.’” 27 *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)).

Therefore, the 28 first factor weighs in favor of dismissal. 1 As to the Court’s need to manage its docket, “[t]he trial judge is in the best position to 2 determine whether the delay in a particular case interferes with docket management and the 3 public interest.... It is incumbent upon the Court to manage its docket without being subject to 4 routine noncompliance of litigants....” *Id.* (citations omitted).

Plaintiff has failed to respond to 5 the Court’s screening order. This failure to respond is delaying the case and interfering with 6 docket management. Therefore, the second factor weighs in favor of dismissal. 7 Turning to the risk of prejudice, “pendency of a lawsuit is not sufficiently prejudicial in 8 and of itself to warrant dismissal.” *Id.* (citing *Yourish*, 191 F.3d at 991).

However, “delay 9 inherently increases the risk that witnesses’ memories will fade and evidence will become 10 stale,” *id.* at 643, and it is Plaintiff’s failure to comply with a court order and to prosecute this 11 case that is causing delay.

Therefore, the third factor weighs in favor of dismissal. 12 As for the availability of lesser sanctions, given that Plaintiff has chosen not to 13 prosecute this action and has failed to comply with the Court’s order, despite being warned of 14 possible dismissal, there is little available to the Court which would constitute a satisfactory 15 lesser sanction while protecting the Court from further unnecessary expenditure of its scarce 16 resources.

Considering Plaintiff’s in forma pauperis status, it appears that monetary sanctions 17 are of little use to prompt him to comply with future orders. And given the stage of these 18 proceedings, the preclusion of evidence or witnesses is not available.

Therefore, the fourth 19 factor weighs in favor of dismissal. 20 Finally, because public policy favors disposition on the merits, this final factor weighs 21 against dismissal. *Id.* 22 After weighing the factors, the Court finds that dismissal is appropriate. 23 V. CONCLUSION, ORDER, AND RECOMMENDATIONS 24 Accordingly, IT IS ORDERED that the Clerk of Court is respectfully directed to assign 25 a District Judge to this case.

26 And based on the forgoing, IT IS RECOMMENDED as follows: 27 1. This action be dismissed, with prejudice, for failure to state a claim, failure to 28 prosecute, and failure to comply with a court order. 1 2. The Clerk of Court be directed to close this case. 2 These findings and recommendations are submitted to the United States District Judge 3 [] assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).

Within thirty 4 || (30) days after being served with these findings and recommendations, Plaintiff may file 5 || written objections with the Court. Such a document should be captioned “Objections to 6 || Magistrate Judge’s Findings and Recommendations.” Any objections shall be limited to no 7 than fifteen (15) pages, including exhibits. Plaintiff is advised that failure to file 8 || objections within the specified time may result in the waiver of rights on appeal.

Wilkerson v. 9 || Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 10 || (9th Cir. 1991)). 11 IT IS SO ORDERED. Dated: _May 27, 2025 ☐☐☐ hey 14
UNITED STATES MAGISTRATE JUDGE 15 16 17 18 19 20 21 22 23 24 25 26 27 28 11