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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GREGORY SHEHEE,	)	NO. CV 12-10608-PA(E)
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM AND ORDER DISMISSING
	)	
PAUL TANAKA, et al.,	)	COMPLAINT WITH LEAVE TO AMEND
	)	
Defendants.	)	
_____	)	

For the reasons discussed below, the Complaint is dismissed with leave to amend. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b).

**BACKGROUND**

Plaintiff, allegedly a detainee at the Los Angeles County Jail Twin Towers Correctional Facility, brings this civil rights action pursuant to 42 U.S.C. section 1983 against Los Angeles County Sheriff Paul Tanaka [sic], Los Angeles County Supervisor Gloria Molina, and a number of jail officials and other persons. Plaintiff's concurrently filed "Request to Waive Court Fees" identifies Plaintiff's address as

1 the Coalinga State Hospital, but the Complaint shows Plaintiff's  
2 address to be the Twin Towers County Correctional Facility.

3  
4 The Complaint consists of a form Complaint to which is attached a  
5 typed and handwritten Complaint containing the charging allegations.<sup>1</sup>  
6 The Complaint is virtually identical to a Complaint Plaintiff  
7 previously filed in this Court in 2008, in Shehee v. Baca, CV 08-2277-  
8 JHN(E).<sup>2</sup> The only three differences appear to be: (1) the caption  
9 page in this action is typed, whereas the caption page in the previous  
10 action was handwritten; (2) in this action, Plaintiff sues Paul Tanaka  
11 as the "Los Angeles County Sheriff," whereas in Shehee v. Baca  
12 Plaintiff sued Los Angeles County Sheriff Leroy Baca; and (3) in this  
13 action, Plaintiff seeks damages in the sum of \$524 million, whereas  
14 the Complaint in Shehee v. Baca sought only \$124 million.

15  
16 **PLAINTIFF'S PREVIOUS ACTION IN SHEHEE v. BACA**

17  
18 On May 2, 2008, the Court dismissed the Complaint in Shehee v.  
19 Baca with leave to amend. After receiving several extensions of time,  
20 Plaintiff filed a First Amended Complaint on August 22, 2008,  
21 accompanied by thirty filed "appendices" in a stack over a foot high  
22 and containing hundreds of inmate requests and grievances submitted by  
23 Plaintiff, various medical records, at least a hundred letters to

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24  
25 <sup>1</sup> Unless otherwise indicated, all subsequent references  
26 to the "Complaint" refer to the typewritten Complaint attached to  
the form Complaint.

27 <sup>2</sup> The Court takes judicial notice of the docket and filed  
28 documents in Shehee v. Baca, CV 08-2277-JHN(E). See Mir v.  
Little Company of Mary Hosp., 844 F.2d 646, 649 (9th Cir. 1988)  
(court may take judicial notice of court records).

1 Plaintiff from the American Civil Liberties Union, and many other  
2 unnumbered documents of uncertain significance. On September 5, 2008,  
3 the Court dismissed the First Amended Complaint with leave to amend.  
4

5 Despite several extensions of time, Plaintiff did not file a  
6 timely Second Amended Complaint. Therefore, on March 5, 2009, the  
7 Magistrate Judge issued a Report and Recommendation recommending  
8 dismissal of the action without prejudice for failure to prosecute.  
9 However, On March 26, 2008, the Magistrate Judge withdrew the Report  
10 and Recommendation after receiving another request for an extension of  
11 time from Plaintiff, and granted Plaintiff another extension of time  
12 to file a Second Amended Complaint.  
13

14 Plaintiff filed a notice of appeal on April 28, 2009. On May 1,  
15 2009, Plaintiff filed a Second Amended Complaint accompanied by a  
16 request to "move" all of the appendices to the First Amended Complaint  
17 into the Second Amended Complaint. On May 13, 2009, the Court  
18 dismissed the Second Amended Complaint with leave to amend.  
19

20 On June 9, 2009, Plaintiff filed a Third Amended Complaint. On  
21 June 10, 2009, the Court issued an "Order Directing Service of Process  
22 of Third Amended Complaint by the United States Marshal" on the County  
23 of Los Angeles and on Defendants Baca, Baker, Waters, Adams, Becerra,  
24 Molina, Clark, Peck and Malone in their individual capacities.  
25

26 On June 29, 2009, the United States Court of Appeals for the  
27 Ninth Circuit dismissed Plaintiff's appeal pursuant to Plaintiff's  
28 request for a voluntary dismissal.

1 On August 25, 2009, Defendants Baca and Molina filed motions to  
2 dismiss. On October 23, 2009, the Court dismissed the Third Amended  
3 Complaint with leave to amend. Although the Court later granted  
4 Plaintiff a requested extension, Plaintiff did not file a timely  
5 Fourth Amended Complaint. Therefore, on December 22, 2009, the  
6 Magistrate Judge issued a Report and Recommendation recommending  
7 dismissal of the action without prejudice for failure to prosecute.  
8

9 On December 22, 2009, however, Plaintiff filed another request  
10 for an extension of time to file a Fourth Amended Complaint.  
11 Therefore, on December 28, 2009, the Magistrate Judge withdrew the  
12 Report and Recommendation and granted Plaintiff an extension of time  
13 to file a Fourth Amended Complaint.  
14

15 Plaintiff again failed to file a timely Fourth Amended Complaint  
16 within the allotted time. Therefore, on February 1, 2009, the  
17 Magistrate Judge issued a Report and Recommendation recommending  
18 dismissal of the action without prejudice for failure to prosecute.  
19 Plaintiff did not file any objections or any other document in  
20 response to the Report and Recommendation. On March 9, 2009, the  
21 District Court issued an Order approving and adopting the Report and  
22 Recommendation. Judgment was entered on March 10, 2010.  
23

24 Plaintiff filed a Notice of Appeal on March 25, 2010. On  
25 February 3, 2012, the United States Court of Appeals for the Ninth  
26 Circuit affirmed the judgment. The mandate was entered in this Court  
27 on February 6, 2012.  
28

1                                   **PLAINTIFF'S ALLEGATIONS IN THE PRESENT COMPLAINT**

2

3           Plaintiff alleges that, since February 2, 2001, he has been a

4 civil detainee confined at the Los Angeles County Jail "Twin Towers"

5 facility pending civil proceedings under California's Sexually Violent

6 Predators Act, California Welfare and Institutions Code § 6600 et seq.

7 ("SVP Act") (Complaint, pp. 2, 5). In the section of the Complaint

8 entitled "Defendants," Plaintiff identifies the Defendants as:

9 (1) "Sheriff" Tanaka; (2) Supervisor Molina; (3) sheriff's captains

10 Marilyn Baker, David Waters, Gary L. Adams and I. Becerra; (3) jail

11 chief physicians John Clark, Sander Peck and Young; (4) Dr. Donald S.

12 Minckler, the Director of Glaucoma Services at the Keck School of

13 Medicine at the University of Southern California ("USC"); (5) medical

14 student Jane Doe; (6) jail dietary supervisor Mr. McDonald; and

15 (7) D.A. Cruz of the jail Legal Unit, Inmate Pro-Per Services.

16 Plaintiff sues all of these Defendants in their individual and

17 official capacities. As discussed below, however, the body of the

18 Complaint appears to allege claims against numerous other persons.

19 Plaintiff seeks unspecified injunctive relief, punitive damages in the

20 sum of \$524 million, and (apparently) an order requiring unidentified

21 sheriff's department employees to testify "confidentially" (Complaint,

22 "Request for Prayer for Relief").

23

24           The Complaint purports to allege twelve claims for relief, some

25 of which contain overlapping allegations:

26 ///

27                                   **Claim One**

1 In Claim One, Plaintiff alleges that, in September of 1999,  
2 Plaintiff was diagnosed with glaucoma of both eyes (Complaint, p. 6).  
3 Plaintiff alleges that, following Plaintiff's transfer to the jail,  
4 Dr. Williams examined Plaintiff and prescribed medication, including  
5 pain medication (id.). Unidentified nurses allegedly denied Plaintiff  
6 his pain medication from 2004 through 2006 (id.). On or about  
7 February 1, 2005, "Jane Doe," allegedly a medical student at the  
8 Doheny Eye Institute, Keck School of Medicine, assertedly deliberately  
9 misdiagnosed Plaintiff, allegedly causing Plaintiff to lose vision in  
10 his left eye and to suffer pain and injury to his right eye (id.).  
11 Plaintiff also alleges that an unidentified person or persons denied  
12 Plaintiff "doctor-prescribed" eye drops (id.).<sup>3</sup>

13  
14 Plaintiff further alleges that unidentified persons caused  
15 unhealthy conditions by using their feet to slide Plaintiff's  
16 medication under his cell door (id.). Plaintiff alleges that the  
17 Supervisor of Medical Services for the jail, who is unidentified,  
18 failed to train his or her subordinates to give Plaintiff adequate  
19 medical treatment and to provide medication in a proper manner (id.).  
20

21 **Claim Two**

22  
23 Plaintiff alleges Dietary Services Supervisor McDonald and  
24 Medical Diets Supervisor Francisco Lerena failed to train their staffs  
25 properly, causing Plaintiff to be denied his allegedly doctor-  
26 prescribed and court-ordered "No Red Meat" diet (Complaint, p. 7).  
27

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28 <sup>3</sup> It is unclear whether these eye drops are the same  
medications allegedly prescribed by Dr. Williams.

1 According to Plaintiff, these supervisors should have known of a  
2 history of cancer in Plaintiff's family and Plaintiff's allegedly high  
3 risk for cancer (id.). Plaintiff alleges that dietary staff member  
4 Blanca Moran and other staff members denied Plaintiff his allegedly  
5 prescribed "No Red Meat" diet, and that staff members "Jane Doe" and  
6 "Ms. Lee" denied Plaintiff a prescribed "No Spice" diet, allegedly  
7 causing Plaintiff to throw up (id.). According to Plaintiff, he was  
8 unable to eat his one hot meal for seven days (id.).  
9

10 Plaintiff also alleged that unidentified "medical diet employees  
11 and deputies" used inmates to "food-poison" Plaintiff, assertedly  
12 causing Plaintiff to throw up and defecate "uncontrollably" for three  
13 days, and necessitating treatment with an "I.V." for six hours (id.,  
14 pp. 7-8). Plaintiff contends medical staff knew that inmates who were  
15 not civil detainees were prohibited from coming into contact with a  
16 detainee's food (id., p. 8). Plaintiff also alleges medical staff  
17 denied Plaintiff treatment for this condition (id., p. 8).  
18

### 19 Claim Three

20

21 Plaintiff alleges that, due to the failure of Sheriff Baca and  
22 Defendants Baker and Waters properly to train their subordinates,  
23 Plaintiff was placed in administrative segregation from approximately  
24 October 12, 2004 until July 5, 2007, without a hearing, during which  
25 time he allegedly was denied privileges and access to a law library  
26 (id.). Plaintiff further alleges these Defendants allowed their  
27 subordinates to put Plaintiff's life in danger by placing him in  
28 administrative segregation with "convicted serious murderers such as

1 Clarence Dwayne [sic] Turner," and by allowing Plaintiff to be  
2 attacked by penal inmates (id.). Plaintiff further alleges that these  
3 Defendants allowed their deputies: (1) to retaliate against Plaintiff  
4 for filing inmate complaints; (2) to discriminate against Plaintiff on  
5 account of race; and (2) to treat Plaintiff as a penal inmate (id.).  
6

7 **Claim Four**  
8

9 Plaintiff alleges that Sergeant McLone, deputies Gudino, Julian,  
10 Pitino and Wargo, and other unidentified deputies denied Plaintiff  
11 access to the courts and retaliated against Plaintiff for filing  
12 grievances "based on their discrimination against [Plaintiff] for  
13 being a sexual predator" (Complaint, p. 9). These individuals also  
14 allegedly denied Plaintiff his one hour, doctor-prescribed out-of-cell  
15 exercise time (id.). Defendants allegedly denied Plaintiff medication  
16 for his glaucoma and access to the medical clinic (id.). Deputy  
17 Gudino allegedly took four boxes of Plaintiff's legal materials, the  
18 loss of which assertedly prejudiced Plaintiff's ability to present an  
19 adequate defense in his SVP proceedings (id.).  
20

21 Defendants allegedly housed Plaintiff with penal inmates "with  
22 the expectation of having [Plaintiff] attacked and possibly killed" by  
23 convicted murderer inmate Turner (id.). Inmate Turner allegedly  
24 threatened Plaintiff in December of 2006, saying he, Turner, was going  
25 to make Plaintiff "'victim #12'" (id.).  
26

26 ///

27 Defendants also assertedly denied Plaintiff the ability to speak  
28 to a supervisor (id.). Plaintiff allegedly received no response to

1 Plaintiff's "numerous" grievances (id.). Defendants allegedly  
2 discriminated against Plaintiff on account of Plaintiff's race and  
3 status as a sexually violent predator detainee (id.).  
4

5 Plaintiff further alleges that, on July 5, 2005, several "John  
6 Doe" deputies and an unidentified supervisor subjected Plaintiff to  
7 excessive force by "forcefully" handcuffing Plaintiff after Plaintiff  
8 requested to speak with a supervisor concerning his "No Red Meat" diet  
9 (id., p. 10). According to Plaintiff, a 280-pound deputy dropped his  
10 weight on Plaintiff's back, and other deputies placed Plaintiff's  
11 hands high above his shoulder blades, assertedly causing Plaintiff  
12 serious injury (id.). Plaintiff alleges he was slammed against a door  
13 jamb, causing Plaintiff's lip to split (id.). Plaintiff allegedly was  
14 removed with his arms forced up and then slammed against a staging  
15 door (id.). The deputies allegedly slammed Plaintiff's face into a  
16 metal screen, breaking Plaintiff's eyeglasses and injuring his face  
17 and neck (id.). The deputies then reportedly handcuffed Plaintiff so  
18 tightly as to cut off Plaintiff's circulation and bruise his wrists  
19 (id.). Plaintiff allegedly was left in this condition in the yard  
20 without medical attention for over five hours (id.). An unidentified  
21 senior deputy allegedly observed this incident but reportedly did  
22 nothing to protect Plaintiff (id.). Plaintiff alleges that, the next  
23 morning, nurse Kim denied Plaintiff medical care because the nurse  
24 assertedly was afraid of the deputies (id.). Plaintiff allegedly did  
25 not receive medical attention for two weeks (id.).

26 ///

27 **Claim Five**

28

1 Plaintiff alleges that "Custody Assistant D.A. Cruz," deputy  
2 Bisaha, and other deputies assigned to the Legal Unit denied Plaintiff  
3 law library access despite court orders for library access and legal  
4 supplies from March 22, 2001 through July 2007 (Complaint, p. 11).  
5 These denials allegedly caused "irreparable harm" to seven state and  
6 federal lawsuits in which Plaintiff was involved, including his SVP  
7 proceedings (id.). Other unidentified "John Doe" deputies also  
8 reportedly denied Plaintiff access to the module law library, causing  
9 harm to Plaintiff's cases (id.). Plaintiff further alleges that, in  
10 retaliation for Plaintiff's grievances, unidentified deputies left  
11 Plaintiff in an unsanitary, smelly library bathroom for 12 hours, and  
12 left Plaintiff in a shower that smelled of urine (id.).  
13

#### 14 **Claim Six**

15  
16 Plaintiff alleges that deputy Benahizee and a psychiatrist, Dr.  
17 King, exhibited deliberate indifference and retaliated against  
18 Plaintiff for filing grievances by causing to be filed a fraudulent  
19 "psych report" alleging Plaintiff was "homicidal/suicidal" (Complaint,  
20 p. 12). Deputies allegedly confined Plaintiff in a wheelchair in  
21 excessively tight waistchains and took him to the office of Dr. Green,  
22 who assertedly said he, Dr. Green, would send Plaintiff to the  
23 forensics floor with eye medication and medical orders for a "No Red  
24 Meat Diet," but that Dr. Green would not clear Plaintiff from being  
25 labeled "homicidal/suicidal" (id.). Plaintiff allegedly was almost  
26 placed in a "5-Points Restraint Bed" (id.).  
27

#### 28 **Claim Seven**

1 Plaintiff alleges that deputies Bisaha and Smeltzer denied  
2 Plaintiff his right of privacy when these deputies entered Plaintiff's  
3 cell and examined and videotaped Plaintiff's legal documents  
4 (Complaint, pp. 12-13). These actions allegedly caused irreparable  
5 injury to Plaintiff's other lawsuits (id., p. 13).

6  
7 **Claim Eight**  
8

9 Plaintiff alleges that unidentified deputies retaliated against  
10 Plaintiff for filing complaints and contacting the ACLU concerning  
11 inadequacies in the law library, assertedly by leaving Plaintiff in a  
12 law library lacking toilet facilities for six to twelve hours, which  
13 allegedly caused pain to Plaintiff's liver and kidneys (Complaint, pp.  
14 13-14). These actions allegedly hindered Plaintiff in the prosecution  
15 of his various lawsuits, allegedly from approximately March 6, 2002  
16 "continuously" until June 2007 (id., p. 14).

17  
18 Plaintiff also alleges the library had no toilet or running water  
19 in the library, bad lighting, defective telephones and computer and no  
20 "ADA computer screens" (id.). Plaintiff alleges that sheriff's  
21 employee Smilor said he, Smilor, would put his urine in Plaintiff's  
22 doctor-prescribed special diet (id.). Plaintiff allegedly attempted  
23 to notify Sheriff Baca and other supervisors concerning the alleged  
24 denial of Plaintiff's privileges and rights due to a lack of training  
25 (id.).

26 ///

27 **Claim Nine**  
28

1 Plaintiff alleges that, on September 5, 2007, Nurse Cruz told  
2 Plaintiff that Plaintiff had an "ACLU medical court order" for a "No  
3 Spice" diet, "which was denied to [Plaintiff]" (Complaint, p. 14).  
4 Plaintiff allegedly was told to see a doctor, but Nurse Basilis  
5 refused to allow Plaintiff to see a doctor (id., pp. 14-15). When  
6 Plaintiff protested that he allegedly had a court order to see a  
7 doctor, Deputy Briseno allegedly grabbed Plaintiff and slammed  
8 Plaintiff's face into a wall (id., p. 15). Deputies then allegedly  
9 took Plaintiff to his housing module and slammed Plaintiff face first  
10 into the wall beside his cell (id.). Sergeant Christiansen allegedly  
11 stood by, failed to intervene to protect Plaintiff, and then ordered  
12 Plaintiff locked in his cell without any medical attention (id.). A  
13 "pill call" nurse allegedly refused Plaintiff's request for medical  
14 treatment for severe pain, and refused to document Plaintiff's  
15 injuries (id.).

16  
17 The next morning, deputy Cobb and a "Jane Doe" nurse allegedly  
18 came to Plaintiff's cell to administer medication before Plaintiff  
19 went to court (id.). Plaintiff, who allegedly could barely get out of  
20 bed, assertedly stated he had severe pain in his neck, back and face  
21 and wanted to see a doctor (id., pp. 15-16). The nurse allegedly  
22 denied Plaintiff's request to see a doctor (id., p. 16). Later,  
23 Plaintiff allegedly told deputies Owens and Pimentel that Plaintiff  
24 was in severe pain and asked to see a doctor (id.). Plaintiff  
25 allegedly was taken to the clinic, where nurses assertedly denied  
26 Plaintiff access to a doctor (id.). Owens allegedly fastened  
27 waistchains on Plaintiff which were so tight that they caused bruises  
28 and broke the skin on Plaintiff's wrist (id.). The deputies and

1 nurses allegedly refused Plaintiff's requests to see a doctor (id.).  
2 The deputies allegedly pulled Plaintiff to the floor and placed their  
3 knees on Plaintiff's spine, assertedly causing severe pain to  
4 Plaintiff's spine, back and neck (id., p. 17). Deputy Pimentel  
5 allegedly stuck his fingers into Plaintiff's eyes and sprayed "O.C.  
6 Mace" into Plaintiff's eyes and mouth (id.). Medical employees Adu,  
7 Farole and other staff nurses allegedly observed the attack and  
8 Plaintiff's injuries, but left the scene and failed to document the  
9 incident or Plaintiff's injuries (id.).  
10

11 The deputies allegedly left Plaintiff in a holding tank for  
12 thirty minutes without any means of washing his eyes (id.). According  
13 to Plaintiff, a nurse appeared and allegedly sprayed water in  
14 Plaintiff's eyes, which allegedly did not relieve the pain because  
15 Plaintiff assertedly has glaucoma, macular hole degeneration and other  
16 eye diseases (id.). This incident allegedly has caused Plaintiff to  
17 suffer blurred vision, severe headaches and dizziness (id.).  
18 Plaintiff further alleges that, on September 5 and 6, 2007, sheriff's  
19 doctors Wilbur Williams, Raleigh Saddler, Jr. and "Dr. Doe" denied  
20 Plaintiff medical care for his eyes, face, head, neck, spine and back  
21 (id., p. 18). Dr. Williams allegedly made a fraudulent examination  
22 report (id.).  
23

24 Sergeant Patterson allegedly made a video, and Plaintiff  
25 allegedly was locked down in his cell for four days without any reason  
26 (id.). On September 30, 2007, Sergeant Christiansen and other  
27 deputies allegedly videotaped Plaintiff's statement concerning the  
28 alleged assault (id.). Sergeant Christiansen allegedly falsely denied

1 being involved in the assault (id.). Sergeant Christiansen allegedly  
2 took Plaintiff to the medical clinic, videotaping Plaintiff during the  
3 trip, and told the nurse to tell the doctor that Plaintiff had a  
4 "small acute arthritis" in his neck (id.). A "Dr. Doe" allegedly  
5 refused to examine Plaintiff, gave Plaintiff a pain pill, and said he  
6 would have Plaintiff's lower back x-rayed (id., p. 19). Without  
7 examining Plaintiff, the doctor said Plaintiff had a "small acute  
8 arthritis" of the neck (id.). Plaintiff alleges the failure of any  
9 doctor to examine Plaintiff constituted retaliation against Plaintiff  
10 for filing "over 2,875 Inmate Complaint Forms against Sheriff's  
11 employees" (id.) (original emphasis).

12  
13 **Claim Ten**

14  
15 Plaintiff alleges that, on September 22 and September 30, 2007,  
16 Lieutenants Slago and Lopez confined Plaintiff in administrative  
17 segregation, assertedly without affording Plaintiff his right to call  
18 staff and inmate witnesses in his defense (Complaint, p. 19).  
19 Sergeants Figueroa, Wenger and Estrada allegedly failed to train their  
20 subordinates, assertedly causing Plaintiff to be placed unlawfully in  
21 administrative segregation with penal inmates, which allegedly put  
22 Plaintiff's life in danger (id.).

23 ///

24 ///

25 ///

26 ///

27 **Claim Eleven**

28

1 Plaintiff alleges that, from August 28, 2007 to the present, Head  
2 Supervising Cook Lily Sedaña, deputy Felicia Price, and unnamed  
3 medical supervisors and staff have retaliated against Plaintiff for  
4 filing grievances by denying Plaintiff his allegedly doctor- and  
5 court-ordered "No Spice Diet" (Complaint, p. 20).

6  
7 **Claim Twelve**  
8

9 Plaintiff alleges that, on February 25, 2008, two unidentified  
10 transportation deputies committed negligence by failing to report to  
11 Coalinga State Hospital medical department supervisors that the engine  
12 on the Twin Towers facility bus was spilling fuel on the freeway  
13 (Complaint, p. 21). Plaintiff, allegedly a bus passenger, was exposed  
14 to assertedly toxic fumes which allegedly caused pain and injury to  
15 Plaintiff's respiratory and cardio pulmonary functions (id.).  
16 Plaintiff also allegedly had to obtain an injection to prevent  
17 Plaintiff from throwing up (id.).  
18

19 **DISCUSSION**  
20

21 **I. Unclear Identification of Defendants**  
22

23 As mentioned above, Plaintiff identifies certain Defendants in  
24 the caption and introductory paragraphs of the Complaint, but also  
25 appears to assert claims against many other individuals, some  
26 identified by name in the various claims for relief and some  
27 identified by fictitious names. It is unclear which of these other  
28 persons Plaintiff intends to sue. It also is unclear which Defendants

1 are being sued on which claim for relief. As the Court previously  
2 advised Plaintiff in Shehee v. Baca, a complaint is subject to  
3 dismissal if one cannot determine from the pleading who is being sued.  
4 McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996).<sup>4</sup>

## 6 **II. Official Capacity Claims**

7  
8 The official capacity claims against the individual Defendants  
9 must be construed as claims against the County. See Kentucky v.  
10 Graham, 473 U.S. 159, 165-66 (1985). As the Court previously advised  
11 Plaintiff in Shehee v. Baca, Plaintiff may not sue the County or any  
12 municipal entity on a theory of respondeat superior, which is not a  
13 theory of liability cognizable under 42 U.S.C. section 1983. See  
14 Connick v. Thompson, 131 S. Ct. 1350, 1359 (2011); Ashcroft v. Iqbal,  
15 556 U.S. 662, 676 (2009); Polk County v. Dodson, 454 U.S. 312, 325  
16 (1981); Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1185 (9th  
17 Cir. 2002), cert. denied, 537 U.S. 1106 (2003). A municipal entity  
18 may be held liable only if the alleged wrongdoing was committed  
19 pursuant to a municipal policy, custom or usage. See Board of County  
20 Commissioners of Bryan County, Oklahoma v. Brown, 520 U.S. 397, 402-04  
21 (1997); Monell v. New York City Department of Social Services, 436  
22 U.S. 658, 691 (1978). Plaintiff does not allege any basis for

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23  
24 <sup>4</sup> A plaintiff may name a fictitious defendant in his or  
25 her complaint if the plaintiff does not know the true identity of  
26 the defendant prior to the filing of the complaint. Wakefield v.  
27 Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999). However, before  
28 the Court can order service of process by the United States  
Marshal upon any fictitious Defendant, Plaintiff must provide  
identifying information sufficient to permit the United States  
Marshal to effect service of process upon the Defendant,  
including the Defendant's full name and address.

1 municipal liability against the County. Conclusory allegations do not  
2 suffice. See Ashcroft v. Iqbal, 556 U.S. at 678 (plaintiff must  
3 allege more than an “unadorned, the-defendant-unlawfully-harmed-me  
4 accusation”; a pleading that “offers labels and conclusions or a  
5 formulaic recitation of the elements of a cause of action will not  
6 do”); Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011) (en banc),  
7 cert. denied, 132 S. Ct. 2101 (2012) (“allegations in a complaint or  
8 counterclaim may not simply recite the elements of a cause of action,  
9 but must contain sufficient allegations of underlying facts to give  
10 fair notice and to enable the opposing party to defend itself  
11 effectively”); see also AE ex rel. Hernandez v. County of Tulare, 666  
12 F.3d 631, 637 (9th Cir. 2012) (pleading standards set forth in Starr  
13 v. Baca govern municipal liability claims).

14  
15 Additionally, Plaintiff may not recover punitive damages against  
16 a governmental entity or an individual governmental officer in his or  
17 her official capacity. See City of Newport v. Fact Concerts, Inc.,  
18 453 U.S. 247, 271 (1981); Ruvalcaba v. City of Los Angeles, 167 F.3d  
19 514, 524 (9th Cir.), cert. denied, 528 U.S. 1003 (1999).

20  
21 **III. Personal Involvement of Individual Defendants**

22  
23 As the Court previously advised Plaintiff in Shehee v. Baca, an  
24 individual defendant is not liable on a civil rights claim unless the  
25 facts establish the defendant’s personal involvement in the  
26 constitutional deprivation or a causal connection between the  
27 defendant’s wrongful conduct and the alleged constitutional  
28 deprivation. See Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989);

1 Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). Plaintiff may  
2 not sue any supervisor on a theory that the supervisor is liable for  
3 the acts of his or her subordinates. See Polk County v. Dodson, 454  
4 U.S. at 325. A supervisor may be held liable in his or her individual  
5 capacity "for [his or her] own culpable action or inaction in the  
6 training, supervision or control of [his or her] subordinates."  
7 Watkins v. City of Oakland, Cal., 145 F.3d 1087, 1093 (9th Cir. 1998)  
8 (quoting Larez v. City of Los Angeles, 946 F.2d 630, 646 (9th Cir.  
9 1991)). To state a claim against any individual defendant, the  
10 plaintiff must allege facts showing that the individual defendant  
11 participated in or directed the alleged violation, or knew of the  
12 violation and failed to act to prevent it. See Barren v. Harrington,  
13 152 F.3d 1193, 1194 (9th Cir. 1998), cert. denied, 525 U.S. 1154  
14 (1999) ("A plaintiff must allege facts, not simply conclusions, that  
15 show that an individual was personally involved in the deprivation of  
16 his civil rights."); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.  
17 1989).

18  
19 Plaintiff fails to allege the personal involvement of several of  
20 the Defendants or putative Defendants. For example, Plaintiff names  
21 Paul Tanaka, Supervisor Molina, the chief physicians of the jail, Dr.  
22 Minckler, and sheriff's captains Adams and Becerra, but generally  
23 fails to allege facts showing these persons' personal involvement in  
24 any alleged civil rights violation. The Complaint is insufficient as  
25 to those Defendants or putative Defendants as to whom Plaintiff fails  
26 to plead personal involvement in any alleged constitutional violation.

27 **IV. Claims Implicating Validity of SVP Determination**

28

1 Claim Twelve suggests Plaintiff may now be confined at the  
2 Coalinga State Hospital, a facility under the jurisdiction of the  
3 California Department of Mental Health which houses those determined  
4 to be sexually violent predators. See Cal. Welf. & Inst. Code §§  
5 4100(b), 7200.

6  
7 The SVP Act establishes procedures whereby a person previously  
8 convicted of a "sexually violent" offense against two or more victims  
9 and who suffers from a "diagnosed mental disorder that makes the  
10 person a danger to the health and safety of others in that it is  
11 likely that he or she will engage in sexually violent criminal  
12 behavior" may be civilly committed for a determinate period. See Cal.  
13 Welf. & Inst. Code § 6600 et seq.; Seaton v. Mayberg, 610 F.3d 530,  
14 532-33 (9th Cir. 2010), cert. denied, 131 S. Ct. 1534 (2011).  
15 Following the filing of a petition for a determination that an  
16 individual is a sexually violent predator, the Superior Court must  
17 hold a hearing to determine whether there is probable cause to believe  
18 that the person is likely to engage in sexually violent predatory  
19 criminal behavior upon release from prison. See Cal. Welf. & Inst.  
20 Code § 6602(a); Hubbart v. Superior Court, 19 Cal. 4th 1138, 1146-47,  
21 81 Cal. Rptr. 2d 492, 969 P.2d 584 (1999). If the court finds  
22 probable cause, the alleged predator must be detained in a "secure  
23 facility" pending a jury trial to determine whether he is a sexually  
24 violent predator within the meaning of the SVP Act. See Cal. Welf. &  
25 Inst. Code § 6602(a); Hubbart v. Superior Court, 19 Cal. 4th at 1146-  
26 47. After a trial at which the defendant is determined to be a  
27 sexually violent predator, the defendant is committed to the custody  
28 of the California Department of Mental Health for an indefinite term.

1 See Cal. Welf. & Inst. Code §§ 6604; Hubbart v. Superior Court, 19  
2 Cal. 4th at 1147.

3  
4 Plaintiff's allegations concerning his asserted transportation  
5 from the jail to the Coalinga State Hospital suggest that Plaintiff's  
6 continuing confinement resulted from a determination in the state  
7 court proceedings that Plaintiff is a sexually violent predator. In  
8 several of his claims, Plaintiff contends that various Defendants'  
9 alleged misconduct caused prejudice to Plaintiff in the SVP  
10 proceedings (see, e.g., Complaint, Ground Four, p. 9; Ground Five, p.  
11 11; Ground Seven, p. 13; Ground Eight, pp. 13-14).

12  
13 As the Court previously advised Plaintiff, in Heck v. Humphrey,  
14 512 U.S. 477 (1994) ("Heck"), the Supreme Court held that, in order to  
15 pursue a claim for damages arising out of an allegedly  
16 unconstitutional conviction or imprisonment, or for other harm caused  
17 by actions whose unlawfulness would render a conviction or sentence  
18 invalid, a civil rights plaintiff must prove that the conviction or  
19 sentence has been "reversed on direct appeal, expunged by executive  
20 order, declared invalid by a state tribunal authorized to make such  
21 determination, or called into question by a federal court's issuance  
22 of a writ of habeas corpus." Id. at 486-487. Heck applies where a  
23 inmate challenges an SVP determination in a suit for damages. See  
24 Huftile v. Miccio-Fonseca, 410 F.3d 1136, 1140-41 (9th Cir. 2005),  
25 cert. denied, 547 U.S. 1166 (2005). Therefore, to the extent  
26 Plaintiff asserts claims for damages implicating the validity of a  
27 finding that Plaintiff is an SVP, Heck bars those claims.

1 **V. Alleged Deliberate Indifference to Medical Needs**

2  
3 Plaintiff asserts a number of claims that jail officials were  
4 deliberately indifferent to Plaintiff's alleged medical needs. The  
5 Eighth Amendment's prohibition against cruel and unusual punishment  
6 does not apply to civil committees. See Rainwater v. Alarcon, 268  
7 Fed. App'x 531, 535 (9th Cir. 2008); Pierce v. Multnomah County,  
8 Oregon, 76 F.3d 1032, 1042 (9th Cir.), cert. denied, 519 U.S. 1006  
9 (1996) (Eighth Amendment's proscription against cruel and unusual  
10 punishment applies only after conviction). The Due Process Clause of  
11 the Fourteenth Amendment provides protection to SVPs that "is at least  
12 coextensive with that applicable to prisoners under the Eighth  
13 Amendment." Rainwater v. Alarcon, 268 Fed. App'x at 525 (citation and  
14 internal quotations omitted). As the Court previously advised  
15 Plaintiff in Shehee v. Baca, jail officials can violate the  
16 constitution if they are "deliberately indifferent" to an inmate's  
17 serious medical needs. See Farmer v. Brennan, 511 U.S. 825, 834  
18 (1994) (Eighth Amendment); Estelle v. Gamble, 429 U.S. 97, 104 (1976)  
19 (same); Gibson v. County of Washoe, Nev., 290 F.3d 1175, 1187 (9th  
20 Cir. 2002), cert. denied, 537 U.S. 1106 (2003) (Due Process standard).

21  
22 To be liable for "deliberate indifference," a jail official must  
23 "both be aware of facts from which the inference could be drawn that a  
24 substantial risk of serious harm exists, and he must also draw the  
25 inference." Farmer v. Brennan, 511 U.S. at 837. "[A]n official's  
26 failure to alleviate a significant risk that he should have perceived  
27 but did not, while no cause for commendation, cannot . . . be  
28 condemned as the infliction of punishment." Id. at 838. Plaintiff's

1 allegations of negligence do not suffice. See Estelle v. Gamble, 429  
2 U.S. at 105-06 ("Medical malpractice does not become a constitutional  
3 violation merely because the victim is a prisoner").

4  
5 "A 'serious' medical need exists if the failure to treat a  
6 prisoner's condition could result in further significant injury or the  
7 'unnecessary and wanton infliction of pain.'" McGuckin v. Smith, 974  
8 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX  
9 Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997); see  
10 also Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000) (en banc)  
11 (examples of "serious medical needs" include "a medical condition that  
12 significantly affects an individual's daily activities," and "the  
13 existence of chronic and substantial pain"; citation and internal  
14 quotations omitted). Plaintiff's allegation that unidentified persons  
15 used their feet to slide Plaintiff's medication under the cell door  
16 does not allege any deliberate indifference to a serious medical need  
17 of Plaintiff. Plaintiff fails to allege that he did not receive the  
18 medication, or that the medication was contaminated in a way to cause  
19 serious injury to Plaintiff if ingested.

20  
21 **VI. Alleged Denial of Access to the Courts**

22  
23 As the Court previously advised Plaintiff in Shehee v. Baca, an  
24 inmate claiming a violation of his right of access to the courts must  
25 demonstrate that he has standing to bring the claim by showing the  
26 defendant's actions caused him to suffer "actual injury" in pursuit of  
27 either a direct or collateral attack upon a conviction or sentence or  
28 a challenge to the conditions of confinement. Lewis v. Casey, 518

1 U.S. 343, 349 (1996); see also Johannes v. County of Los Angeles, 2011  
2 WL 6149244, at \*13 (C.D. Cal. Apr. 8, 2011) (civil detainees have  
3 constitutional right of access to the courts; citations omitted).  
4 Under Lewis v. Casey, an inmate must show that an action was "lost or  
5 rejected," or that presentation of a non-frivolous claim was or is  
6 being prevented, as a result of the alleged denial of access. Id. at  
7 356. Actual injury is not demonstrated by the simple fact that a  
8 prisoner is "subject to a governmental institution that was not  
9 organized or managed properly." Id. at 350. Although Plaintiff  
10 alleges that various Defendants or putative Defendants interfered with  
11 Plaintiff's ability to prosecute his various lawsuits, Plaintiff does  
12 not allege how any asserted particular denial of access to the law  
13 library or legal materials rendered Plaintiff unable to present any  
14 particular non-frivolous claim, or caused any particular action to be  
15 "lost or rejected."

16  
17 **VII. Alleged Failure to Respond to Grievances**

18  
19 To the extent Plaintiff alleges Defendants or putative Defendants  
20 failed to respond to grievances, the Complaint fails to state a claim  
21 for relief. While inmates may enjoy a First Amendment right to file  
22 prison grievances, see Rhodes v. Robinson, 408 F.3d 559, 567 (9th Cir.  
23 2005), inmates have no "separate constitutional entitlement to a  
24 specific prison grievance procedure." See Ramirez v. Galaza, 334 F.3d  
25 850, 860 (9th Cir. 2003), cert. denied, 541 U.S. 1063 (2004) (citation  
26 omitted). The failure of prison officials to respond to or process a  
27 particular grievance does not violate the Constitution. See Flick v.  
28 Alba, 932 F.2d 728, 729 (8th Cir. 1991); Morris v. Newland, 2007 WL

1 707525, at \*7 (E.D. Cal. March 6, 2007), adopted, 2007 WL 987846 (E.D.  
2 Cal. March 30, 2007) ("a failure to process a grievance does not state  
3 a constitutional violation") (citation omitted); Alonzo v. Squyres,  
4 2002 WL 1880736, at \*1 (N.D. Cal. Aug. 9, 2002) ("Although there  
5 certainly is a right to petition the government for redress of  
6 grievances (a First Amendment right), there is no right to a response  
7 or any particular action.") (citations omitted); see also Baltoski v.  
8 Pretorius, 291 F. Supp. 2d 807, 811 (N.D. Ind. 2003) ("[t]he right to  
9 petition the government for redress of grievances, however, does not  
10 guarantee a favorable response, or indeed any response, from state  
11 officials").

#### 12

13 **VIII. Alleged Retaliation**

14

15 Jail officials may not retaliate against detainees who exercise  
16 their First Amendment rights. See Pratt v. Rowland, 65 F.3d 802, 806  
17 (9th Cir. 1995); Bradley v. Hall, 64 F.3d 1276, 1281 (9th Cir. 1995);  
18 Endsley v. Luna, 2009 WL 3806266, at \*14 (C.D. Cal. Nov. 12, 2009),  
19 aff'd, 473 Fed. App'x 750 (2012). To allege retaliation, Plaintiff  
20 must allege that he was retaliated against for exercising his  
21 constitutional rights and that the retaliatory action does not advance  
22 legitimate goals of the institution, such as preserving institutional  
23 order and discipline. Bruce v. Ylst, 351 F.3d 1283, 1288 (9th Cir.  
24 2003) (citations and internal quotations omitted). Although Plaintiff  
25 sprinkles allegations of retaliation throughout the Complaint, in a  
26 number of instances Plaintiff fails to link the alleged retaliation to  
27 any particular act or omission of a particular Defendant or putative  
28 Defendant. Such confused and conclusory allegations of retaliation

1 are insufficient. See Wise v. Washington State Dep't of Corrections,  
2 244 Fed. App'x 106, 108 (9th Cir. 2007), cert. denied, 552 U.S. 1282  
3 (2008) (prisoner's conclusory allegations of retaliation, "without  
4 supporting facts connecting the defendants to his litigation  
5 activities," insufficient).

6  
7 **IX. Alleged Race Discrimination**

8  
9 Inmates are protected under the Equal Protection Clause of the  
10 Fourteenth Amendment from invidious discrimination based on race.  
11 Wolff v. McDonnell, 418 U.S. 539, 556 (1974). As the Court previously  
12 advised Plaintiff in Shehee v. Baca, to allege an equal protection  
13 violation, Plaintiff must allege he was intentionally treated  
14 differently from others similarly situated and that there was no  
15 rational basis for the difference in treatment. See Village of  
16 Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Barren v. Harrington,  
17 152 F.3d 1193, 1194-95 (9th Cir. 1998), cert. denied, 525 U.S. 1154  
18 (1999). The Complaint contains no such allegations. Therefore,  
19 Plaintiff has failed to plead a cognizable race discrimination claim.  
20 See Hamilton v. Adamik, 2007 WL 2782840, at \*4 (N.D. Cal. Sept. 24,  
21 2007) (prisoner's conclusory and ambiguous allegations of race  
22 discrimination insufficient).

23 ///

24 ///

25 ///

26 ///

27 **X. Plaintiff's Address of Record**

28

1 As previously indicated, as in Shehee v. Baca, Plaintiff lists  
2 two different addresses of record: one at the Coalinga State Hospital  
3 and one at the Twin Towers County Jail. Plaintiff again is advised  
4 that Rule 41-6 of the Local Rules of Practice of the United States  
5 District Court for the Central District of California requires a party  
6 proceeding pro se to keep the Court and the opposing parties apprised  
7 of such party's current address and telephone number, if any. The  
8 Court may dismiss an action for failure to maintain a current address  
9 of record. See Carey v. King, 856 F.2d 1439, 1441 (9th Cir. 1988).  
10 Any First Amended Complaint should state Plaintiff's current address  
11 of record.

12  
13 **CONCLUSION AND ORDER**  
14

15 For all of the foregoing reasons, the Complaint is dismissed with  
16 leave to amend. See Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.  
17 2000) (en banc); 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b). If Plaintiff  
18 still wishes to pursue this action, he is granted thirty (30) days  
19 from the date of this Memorandum and Order within which to file a  
20 First Amended Complaint. The First Amended Complaint shall be  
21 complete in itself. It shall not refer in any manner to any prior  
22 complaint. Any First Amended Complaint must identify clearly the  
23 Defendants being sued on each claim for relief, and must allege  
24 clearly how each Defendant assertedly violated Plaintiff's rights.

25 ///

26 ///

27 Plaintiff may not add Defendants without leave of court. See Fed. R.  
28 Civ. P. 21. Failure to file a timely First Amended Complaint may

1 result in the dismissal of this action.

2  
3  
4 DATED: December 26, 2012.

5 

6  
7  
8 \_\_\_\_\_  
9 PERCY ANDERSON  
10 UNITED STATES DISTRICT JUDGE

11 Presented this 20th day of  
12 December, 2012, by:

13 \_\_\_\_\_/S/\_\_\_\_\_  
14 CHARLES F. EICK  
15 UNITED STATES MAGISTRATE JUDGE  
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