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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JACK ROBERT SMITH,

Plaintiff,

v.

KAYLA FISHER,

Defendants.

Case No. CV 18-163-JFW (KK)

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

I.
INTRODUCTION

Plaintiff Jack Robert Smith (“Plaintiff”), proceeding pro se and in forma pauperis, has filed a civil rights complaint (“Complaint”) alleging defendant Dr. Kayla Fisher (“Defendant”) violated his constitutional rights under 42 U.S.C. § 1983 (“Section 1983”) by refusing to release him from his civil commitment at Patton State Hospital. For the reasons discussed below, the Court dismisses the Complaint with leave to amend.

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1 **II.**

2 **BACKGROUND**

3 On December 21, 2017, Plaintiff constructively filed¹ a civil rights complaint
4 against Defendant alleging cruel and unusual punishment in violation of the
5 Fourteenth Amendment. ECF Docket No. (“Dkt.”) 1, Compl. at 4.

6 Plaintiff is hospitalized at Patton State Hospital and alleges Defendant “is
7 “keeping [him] hospitalized” although he “do[es] not meet the criteria.” Id. at 7.
8 Plaintiff claims there is “no legal basis” for his hospitalization and that Defendant
9 has a “‘legal duty’ to make sure patients who ‘meet the criteria’ are
10 ‘recommended’ out of the hospital.” Id.

11 Plaintiff seeks monetary and punitive damages. Id. at 5.

12 **III.**

13 **STANDARD OF REVIEW**

14 As Plaintiff is proceeding in forma pauperis, the Court must screen the
15 Complaint and is required to dismiss the case at any time if it concludes the action
16 is frivolous or malicious, fails to state a claim on which relief may be granted, or
17 seeks monetary relief against a defendant who is immune from such relief. 28
18 U.S.C. § 1915(e)(2)(B); see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir.
19 1998).

20 In determining whether a complaint fails to state a claim for screening
21 purposes, the Court applies the same pleading standard from Rule 8 of the Federal
22 Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to
23 dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter,

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¹ Under the “mailbox rule,” when a pro se inmate gives prison authorities a
26 pleading to mail to court, the court deems the pleading constructively “filed” on
27 the date it is signed. Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010);
28 Douglas v. Noelle, 567 F.3d 1103, 1107 (9th Cir. 2009) (stating the “mailbox rule
applies to § 1983 suits filed by pro se prisoners”); Williamson v. Flavan, No. CV
08-3635-R (JEM), 2009 WL 3066642, at *3 (C.D. Cal. Sept. 21, 2009) (applying
“mailbox rule” to civilly committed individuals as well).

1 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a
2 “short and plain statement of the claim showing that the pleader is entitled to
3 relief.” Fed. R. Civ. P. 8(a)(2).

4 A complaint may be dismissed for failure to state a claim “where there is no
5 cognizable legal theory or an absence of sufficient facts alleged to support a
6 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007). In
7 considering whether a complaint states a claim, a court must accept as true all of
8 the material factual allegations in it. Hamilton v. Brown, 630 F.3d 889, 892-93 (9th
9 Cir. 2011). However, the court need not accept as true “allegations that are merely
10 conclusory, unwarranted deductions of fact, or unreasonable inferences.” In re
11 Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th Cir. 2008). Although a complaint
12 need not include detailed factual allegations, it “must contain sufficient factual
13 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”
14 Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556
15 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially
16 plausible when it “allows the court to draw the reasonable inference that the
17 defendant is liable for the misconduct alleged.” Cook, 637 F.3d at 1004.

18 “A document filed pro se is to be liberally construed, and a pro se complaint,
19 however inartfully pleaded, must be held to less stringent standards than formal
20 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
21 2008). “[W]e have an obligation where the p[laintiff] is pro se, particularly in civil
22 rights cases, to construe the pleadings liberally and to afford the p[laintiff] the
23 benefit of any doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (first
24 alteration in original).

25 If the court finds the complaint should be dismissed for failure to state a
26 claim, the court has discretion to dismiss with or without leave to amend. Lopez v.
27 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted
28 if it appears possible the defects in the complaint could be corrected, especially if

1 the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,
2 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint
3 cannot be cured by amendment, the court may dismiss without leave to amend.
4 Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th
5 Cir. 2009).

6 IV.

7 DISCUSSION

8 **A. PLAINTIFF’S SECTION 1983 CLAIM FOR DAMAGES IS HECK- 9 BARRED**

10 (1) APPLICABLE LAW

11 In order to recover damages under Section 1983 for an allegedly
12 unconstitutional conviction or for other harm caused by actions the unlawfulness of
13 which would render a conviction or sentence invalid, a plaintiff must prove that the
14 conviction has been invalidated. Heck v. Humphrey, 512 U.S. 477, 486-87, 114 S.
15 Ct. 2364, 129 L. Ed. 2d 383 (1994). The Ninth Circuit has applied this principle
16 equally to Section 1983 actions that imply the invalidity of a plaintiff’s civil
17 commitment. Huftile v. Miccio-Fonseca, 410 F.3d 1136, 1140 (9th Cir. 2005), cert.
18 denied, 547 U.S. 1166, 126 S. Ct. 2325, 164 L. Ed. 2d 844 (2006). The Ninth
19 Circuit reasoned that “Heck’s favorable termination rule was intended to prevent a
20 person in custody from using § 1983 to circumvent the more stringent
21 requirements for habeas corpus,” and thus applies not only to prisoners, but to
22 other persons who are “in custody” and thus have access to habeas relief. Id. at
23 1139. Hence, because civilly committed person have access to habeas relief, a
24 civilly committed person seeking to bring a Section 1983 claim for damages that
25 would imply the invalidity of his civil commitment must first invalidate his civil
26 commitment. Id. at 1140.

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1 rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not
2 include new defendants or new allegations that are not reasonably related to the
3 claims asserted in the Complaint. In addition, the First Amended Complaint must
4 be complete without reference to the Complaint or any other pleading, attachment,
5 or document.

6 An amended complaint supersedes the preceding complaint. Ferdik v.
7 Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). After amendment, the Court will
8 treat all preceding complaints as nonexistent. Id. Because the Court grants
9 Plaintiff leave to amend as to all his claims raised here, any claim raised in a
10 preceding complaint is waived if it is not raised again in the First Amended
11 Complaint. Lacey v. Maricopa Cty., 693 F.3d 896, 928 (9th Cir. 2012).

12 The Court advises Plaintiff that it generally will not be well-disposed toward
13 another dismissal with leave to amend if Plaintiff files a First Amended Complaint
14 that continues to include claims on which relief cannot be granted. “[A] district
15 court’s discretion over amendments is especially broad ‘where the court has
16 already given a plaintiff one or more opportunities to amend his complaint.’”
17 Ismail v. Cty. of Orange, 917 F. Supp. 2d 1060, 1066 (C.D. Cal. 2012) (quoting
18 DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 n.3 (9th Cir. 1987)); see also
19 Ferdik, 963 F.2d at 1261. Thus, **if Plaintiff files a First Amended Complaint**
20 **with claims on which relief cannot be granted, the First Amended Complaint**
21 **will be dismissed without leave to amend and with prejudice.**

22 **Plaintiff is explicitly cautioned that failure to timely file a First**
23 **Amended Complaint will result in this action being dismissed with prejudice**
24 **for failure to state a claim, prosecute and/or obey Court orders pursuant to**
25 **Federal Rule of Civil Procedure 41(b).**

26 2. Alternatively, Plaintiffs may voluntarily dismiss the action without
27 prejudice, pursuant to Federal Rule of Civil Procedure 41(a). **The Clerk of Court**
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1 is directed to mail Plaintiffs a blank Notice of Dismissal Form, which the
2 Court encourages Plaintiffs to use.

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5 Dated: January 11, 2018



6 HONORABLE KENLY KIYA KATO
7 United States Magistrate Judge

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