

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

BACKGROUND

On July 27, 2017, Plaintiff constructively filed¹ a civil rights complaint alleging Defendant violated his Fourteenth Amendment rights to substantive due process and to be free from “cruel and unusual punishment [and] torture.” ECF Docket No. (“Dkt.”) 1 at 4.

Plaintiff alleges he is hospitalized at Patton State Hospital “for no reason.” Id. at 6. Plaintiff claims he is “not in need of treatment,” he “do[es] not take medication,” he is “not mentally ill & not dangerous.” Id. According to Plaintiff, his doctors have recommended that Plaintiff “be unconditionally released out of the hospital straight home because [Plaintiff’s] hospitalization is unjustifiable, unnecessary & cruel.” Id. Plaintiff alleges Harry Oreol and Kayla Fisher, directors of Patton State Hospital, “have been notified of [Plaintiff’s] doctors’ recommendation & are aware of the unnecessary cruel conditions of [his] confinement but because of the hospital’s policies they refuse to do anything about it.” Id.

Plaintiff claims his confinement is “unnecessary, unjustifiable, oppressive, dangerous & cruel.” Id. He alleges his “health & safety is in danger” because he is “forced to live with dangerous severely mentally ill patients that are heavily medicated, unsanitary, mean, disrespectful, aggravating & have committed murders & other horrendous violent crimes.” Id. Plaintiff claims he is “living in

¹ Under the “mailbox rule,” when a pro se inmate gives prison authorities a pleading to mail to court, the court deems the pleading constructively “filed” on the date it is signed. Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir. 2010) (citation omitted); 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 fear deprived of [his] life & liberty, suffering endless amounts of frustration, stress
2 & uncertainty.” Id.

3 Plaintiff seeks \$250,000,000 in monetary and punitive damages, as well as
4 “unconditional release from Patton State Hospital and the mental health system.”
5 Id. at 5.

6 III.

7 **STANDARD OF REVIEW**

8 As Plaintiff is proceeding in forma pauperis, the Court must screen the
9 Complaint and is required to dismiss the case at any time if it concludes the action
10 is frivolous or malicious, fails to state a claim on which relief may be granted, or
11 seeks monetary relief against a defendant who is immune from such relief. 28
12 U.S.C. § 1915(e)(2)(B); see Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir.
13 1998).

14 In determining whether a complaint fails to state a claim for screening
15 purposes, the Court applies the same pleading standard from Rule 8 of the Federal
16 Rules of Civil Procedure (“Rule 8”) as it would when evaluating a motion to
17 dismiss under Federal Rule of Civil Procedure 12(b)(6). See Watison v. Carter,
18 668 F.3d 1108, 1112 (9th Cir. 2012). Under Rule 8(a), a complaint must contain a
19 “short and plain statement of the claim showing that the pleader is entitled to
20 relief.” Fed. R. Civ. P. 8(a)(2).

21 A complaint may be dismissed for failure to state a claim “where there is no
22 cognizable legal theory or an absence of sufficient facts alleged to support a
23 cognizable legal theory.” Zamani v. Carnes, 491 F.3d 990, 996 (9th Cir. 2007)
24 (citation omitted). In considering whether a complaint states a claim, a court must
25 accept as true all of the material factual allegations in it. Hamilton v. Brown, 630
26 F.3d 889, 892-93 (9th Cir. 2011). However, the court need not accept as true
27 “allegations that are merely conclusory, unwarranted deductions of fact, or
28 unreasonable inferences.” In re Gilead Scis. Sec. Litig., 536 F.3d 1049, 1055 (9th

1 Cir. 2008) (citation omitted). Although a complaint need not include detailed
2 factual allegations, it “must contain sufficient factual matter, accepted as true, to
3 ‘state a claim to relief that is plausible on its face.’” Cook v. Brewer, 637 F.3d
4 1002, 1004 (9th Cir. 2011) (quoting Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct.
5 1937, 173 L. Ed. 2d 868 (2009)). A claim is facially plausible when it “allows the
6 court to draw the reasonable inference that the defendant is liable for the
7 misconduct alleged.” Cook, 637 F.3d at 1004 (citation omitted).

8 “A document filed pro se is to be liberally construed, and a pro se complaint,
9 however inartfully pleaded, must be held to less stringent standards than formal
10 pleadings drafted by lawyers.” Woods v. Carey, 525 F.3d 886, 889-90 (9th Cir.
11 2008) (citation omitted). “[W]e have an obligation where the p[laintiff] is pro se,
12 particularly in civil rights cases, to construe the pleadings liberally and to afford the
13 p[laintiff] the benefit of any doubt.” Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir.
14 2012) (citation omitted).

15 If the court finds the complaint should be dismissed for failure to state a
16 claim, the court has discretion to dismiss with or without leave to amend. Lopez v.
17 Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000). Leave to amend should be granted
18 if it appears possible the defects in the complaint could be corrected, especially if
19 the plaintiff is pro se. Id. at 1130-31; see also Cato v. United States, 70 F.3d 1103,
20 1106 (9th Cir. 1995). However, if, after careful consideration, it is clear a complaint
21 cannot be cured by amendment, the court may dismiss without leave to amend.
22 Cato, 70 F.3d at 1107-11; see also Moss v. U.S. Secret Serv., 572 F.3d 962, 972 (9th
23 Cir. 2009).

24 ///
25 ///
26 ///
27 ///
28 ///

1 IV.

2 **DISCUSSION**

3 **A. PLAINTIFF FAILS TO STATE A CLAIM CHALLENGING HIS**
4 **COMMITMENT TO PATTON STATE HOSPITAL**

5 **(1) APPLICABLE LAW**

6 Under section 1026.2 of the California Penal Code, a person found not guilty
7 by reason of insanity may apply for release upon the ground that his sanity has been
8 restored. Cal. Pen. Code § 1026.2. Either the insanity acquittee or the medical
9 director of the state hospital or other treatment facility to which the acquittee is
10 committed may apply for release. §1026 (a) and (d). The remedy for a plaintiff
11 challenging his civil commitment or denial of release is through a petition for writ
12 of habeas corpus pursuant to 28 U.S.C. § 2254. See Preiser v. Rodriguez, 411 U.S.
13 475, 500, 93 S. Ct. 1827, 36 L. Ed. 2d 439 (1973). A civil rights action under
14 Section 1983 is proper for challenging conditions of confinement only. Id. at 498-
15 99.

16 **(2) ANALYSIS**

17 Here, to the extent Plaintiff is challenging his continued civil confinement by
18 alleging he is not mentally ill, and therefore eligible to be released, the proper
19 remedy is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 after he
20 exhausts state judicial remedies. Plaintiff may not challenge his continued
21 commitment through a Section 1983 complaint. Thus, to the extent Plaintiff is
22 challenging his commitment, the claim must be dismissed.

23 **B. THE ELEVENTH AMENDMENT BARS CLAIMS AGAINST**
24 **DEFENDANT**

25 **(1) APPLICABLE LAW**

26 “The Eleventh Amendment prohibits federal courts from hearing suits
27 brought against an unconsenting state.” Brooks v. Sulphur Springs Valley Elec.
28 Co-op., 951 F.2d 1050, 1053 (9th Cir. 1991) (citing Pennhurst State School & Hosp.

1 v. Halderman, 465 U.S. 89, 100, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984)). This
2 jurisdictional bar includes “suits naming state agencies and departments as
3 defendants,” and it applies whether plaintiffs “seek damages or injunctive relief.”
4 Id.; Pennhurst State School, 465 U.S. at 102. “[A]n entity with Eleventh
5 Amendment immunity is not a “person” within the meaning of § 1983.” Howlett
6 By & Through Howlett v. Rose, 496 U.S. 356, 365, 110 S. Ct. 2430, 110 L. Ed. 2d
7 332 (1990).

8 (2) ANALYSIS

9 Here, the Eleventh Amendment bars Plaintiff from raising any claim against
10 Defendant Patton State Hospital. See Shaw v. State of California Dep’t of
11 Alcoholic Beverage Control, 788 F.2d 600, 603 (9th Cir. 1986) (“[T]he Eleventh
12 Amendment has been held to bar suits against a state brought by its own citizens,
13 whether the relief sought is money damages or an injunction.”); Jeffrey v. St. Clair,
14 933 F. Supp. 963, 971 (D. Haw. 1996) (holding claims against employees of state
15 hospital were barred by the Eleventh Amendment). As the state of California has
16 not waived its Eleventh Amendment immunity, Plaintiff’s claims must be
17 dismissed.

18 V.

19 **LEAVE TO FILE A FIRST AMENDED COMPLAINT**

20 For the foregoing reasons, the Complaint is subject to dismissal. As the
21 Court is unable to determine whether amendment would be futile, leave to amend
22 is granted. See Lucas v. Dep’t of Corr., 66 F.3d 245, 248 (9th Cir. 1995) (per
23 curiam).

24 Accordingly, IT IS ORDERED THAT **within twenty-one (21) days** of the
25 service date of this Order, Plaintiff choose one of the following two options:

26 1. Plaintiff may file a First Amended Complaint to attempt to cure the
27 deficiencies discussed above. **The Clerk of Court is directed to mail Plaintiff a**
28

1 **blank Central District civil rights complaint form to use for filing the First**
2 **Amended Complaint, which the Court encourages Plaintiff to use.**

3 If Plaintiff chooses to file a First Amended Complaint, Plaintiff must clearly
4 designate on the face of the document that it is the “First Amended Complaint,” it
5 must bear the docket number assigned to this case, and it must be retyped or
6 rewritten in its entirety, preferably on the court-approved form. Plaintiff shall not
7 include new defendants or new allegations that are not reasonably related to the
8 claims asserted in the Complaint. In addition, the First Amended Complaint must
9 be complete without reference to the Complaint or any other pleading, attachment,
10 or document.

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

17 The Court advises Plaintiff that it generally will not be well-disposed toward
18 another dismissal with leave to amend if Plaintiff files a First Amended Complaint
19 that continues to include claims on which relief cannot be granted. “[A] district
20 court’s discretion over amendments is especially broad ‘where the court has
21 already given a plaintiff one or more opportunities to amend his complaint.’”
22 Ismail v. County of Orange, 917 F. Supp.2d 1060, 1066 (C.D. Cal. 2012) (citations
23 omitted); see also Ferdik, 963 F.2d at 1261. Thus, **if Plaintiff files a First**
24 **Amended Complaint with claims on which relief cannot be granted, the First**
25 **Amended Complaint will be dismissed without leave to amend and with**
26 **prejudice.**

27 **Plaintiff is explicitly cautioned that failure to timely file a First**
28 **Amended Complaint will result in this action being dismissed with prejudice**

1 **for failure to state a claim, prosecute and/or obey Court orders pursuant to**
2 **Federal Rule of Civil Procedure 41(b).**

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

7

8

9 Dated: August 11, 2017



10 HONORABLE KENLY KIYA KATO
11 United States Magistrate Judge

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28