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3 **UNITED STATES DISTRICT COURT**  
4 **EASTERN DISTRICT OF CALIFORNIA**  
5

6 **CORY HOCH,**

7 **Plaintiff**

8 **v.**

9 **STEPHEN MAYBERG, et al.,**

10 **Defendants**

**CASE NO. 1:10-CV-2258 AWI DLB (PC)**

**ORDER ON FINDINGS AND  
RECOMMENDATION AND ORDER ON  
DEFENDANTS' MOTION TO DISMISS**

(Doc. Nos. 43, 62)

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12 Plaintiff Cory Hoch is appearing pro se and *in forma pauperis* in this civil rights action  
13 pursuant to 42 U.S.C. § 1983. Plaintiff is civilly detained at Coalinga State Hospital (“CSH”) as a  
14 sexually violent predator (“SVP”), pursuant to California Welfare & Institutions Code § 6600 *et.*  
15 *seq.*, the Sexually Violent Predators Act. On July 12, 2013, Defendants filed a motion to dismiss  
16 Plaintiff’s First Amended Complaint (“FAC”) pursuant to Federal Rule of Civil Procedure  
17 12(b)(6). See Doc. No. 43. The matter was referred to a United States Magistrate Judge pursuant  
18 to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

19 On March 5, 2014, the Magistrate Judge filed a Findings and Recommendations (“F&R”)  
20 that recommended granting in part and denying in part Defendants’ motion. Doc. No. 62. The  
21 F&R contained notice to all parties that Objections to the F&R were to be filed within fourteen  
22 days. Id. To date, no objections have been received.

23 In accordance with the provisions of 28 U.S.C. § 636(b) the Court has conducted a *de novo*  
24 review of this case. The Court’s power to “accept, reject, or modify, in whole or in part, the  
25 findings or recommendations made by the magistrate” exists whether objections have been filed or  
26 not. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983). Having  
27 carefully reviewed the entire file, the Court will respectfully decline to adopt part of the F&R with  
28 respect to the claims against Officers Tarkenton and Christian.

1 **RULE 12(b)(6) FRAMEWORK**

2 Rule 12(b)(6) requires a complaint to “contain sufficient factual matter, accepted as true, to  
3 state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678, (2009).  
4 *Iqbal* did not alter the rule that where the plaintiff is filing a pro se complaint, particularly when  
5 the plaintiff is an inmate in a civil rights case, courts should “construe the pleadings liberally and  
6 afford the petitioner the benefit of any doubt.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010).  
7 Leave to amend “shall be freely given when justice so requires,” and “should be granted with  
8 extreme liberality.” Moss v. U.S. Secret Service, 572 F.3d 962, 972 (9th Cir. 2009); Fed. R. Civ.  
9 P. 15(a)(2). Dismissal without leave to amend is proper when it is clear that the complaint could  
10 not be saved by any amendment. Harris v. Amgen, Inc., 573 F.3d 728, 737 (9th Cir. 2009).

11  
12 **DEFENDANTS’ MOTION**

13 *Parties’ Positions*

14 Only one claim remains from the FAC -- the search of Plaintiff’s room and locker at CSH,  
15 and subsequent seizure of his PlayStation portable gaming device and laptop computer, violated  
16 his Fourth Amendment rights.<sup>1</sup> See Doc. No. 39. Plaintiff alleges that Defendants violated the  
17 Fourth Amendment when they searched his hospital room without a warrant, his consent, probable  
18 cause, or reasonable suspicion. See FAC at § I p.5. However, Plaintiff also alleges that a  
19 psychiatric technician at CSH, Defendant John Sanzberro, “gave the officers [Defendants  
20 Tarkenton and Christian] opportunity to search when he declared that he believed the petitioner  
21 [Plaintiff] had ‘other contraband’ in his property.”<sup>2</sup> FAC at § I p.6. Plaintiff alleges that “these  
22 searches were and are for the furtherance of penal interests.” Id.

23 Defendants argue that Plaintiff has either a reduced expectation of privacy or no reasonable  
24 expectation of privacy in his room at CSH and therefore cannot state a Fourth Amendment claim  
25 for the search of his room. Doc. No. 43.

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27 <sup>1</sup>Plaintiff alleged other claims that were dismissed as part of the Magistrate Judge’s March 12, 2013 screening order.  
See Doc. No. 39.

28 <sup>2</sup>Defendants Tarkenton and Christian are alleged to work in CHS as officers with the Department of Police Services.  
Defendant John Sanzberro is alleged to work in CHS as a Senior Psychiatric Technician and a Unit Shift Lead.

1            Legal Standard

2            The Supreme Court has held that civilly detained persons “are entitled to more considerate  
3 treatment and conditions of confinement than criminals whose conditions of confinement are  
4 designed to punish.” Youngberg v. Romeo, 457 U.S. 307, 322 (1982). In reliance on Youngberg,  
5 the Ninth Circuit has held that court decisions that define the constitutional rights of prisoners can  
6 be relied upon to establish a floor for the constitutional rights of those who are civilly detained as  
7 sexually violent predators (“SVP”). Padilla v. Yoo, 678 F.3d 748, 459 (9th Cir. 2012); Hydrick v.  
8 Hunter, 500 F.3d 978, 989 n.7 (9th Cir. 2007).<sup>3</sup> Accordingly, “the conditions of confinement for  
9 SVPs cannot be more harsh than those under which prisoners are detained.” Hydrick, 500 F.3d at  
10 989 n.7. Because the Fourth Amendment right to be secure against unreasonable searches and  
11 seizures applies to incarcerated prisoners, the same Fourth Amendment right applies to civilly  
12 detained SVPs. Hydrick, 500 F.3d at 993 (citing Thompson v. Souza, 111 F.3d 694, 699 (9th Cir.  
13 1997)). However, the reasonableness of the search involving a civilly detained SVP is determined  
14 by reference to the detention context. Hydrick, 500 F.3d at 993. “SVP’s have been civilly  
15 committed subsequent to criminal convictions and have been adjudged to pose a danger to the  
16 health and safety of others.” Hydrick, 500 F.3d at 990. Civilly detained SVP’s have a diminished  
17 right to privacy. Cf. Bell v. Wolfish, 441 U.S. 520, 557 (1979); Hydrick, 500 F.3d at 990. The  
18 government’s legitimate interests in conducting a search of a civilly detained SVP or his room  
19 mirrors those that arise in the prison context, such as the safety and security of guards and others  
20 in the facility, order within the facility, and the efficiency of the facility’s operations. Hydrick,  
21 500 F.3d at 993; see Jones v. Blanas, 393 F.3d 918, 932 (9th Cir. 2004). A search will violate a  
22 civilly detained SVP’s Fourth Amendment rights if its “arbitrary, retaliatory, or clearly exceeds  
23 the legitimate purpose of detention.” Meyers v. Pope, 303 F. App’x 513, 516 (9th Cir. 2008);  
24 Hydrick, 500 F.3d at 993.

25            Discussion

26            With respect to Sanzberro, Plaintiff alleges that Sanzberro reported to the officers that  
27 Plaintiff was in possession of contraband. It was this report that led to the search of Plaintiff’s

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<sup>3</sup> Hydrick was vacated and remanded on other grounds, 556 U.S. 1256 (2009).

1 room. Plaintiff alleges that the search was without reasonable suspicion or probable cause. The  
2 Court takes the FAC as alleging that Sanzberro had no reasonable basis to believe that Plaintiff  
3 possessed contraband. Without a reasonable basis for believing that Plaintiff possessed  
4 contraband, Sanzberro's actions would be arbitrary and would implicate Plaintiff's Fourth  
5 Amendment rights. At this point, Plaintiff has adequately pled a Fourth Amendment claim against  
6 Defendant Sanzberro. See Hydrick, 500 F.3d at 993; Crowe v. County of San Diego, 608 F.3d  
7 406, 430 (9th Cir. 2010) ("... the requisite causal connection can be established not only by some  
8 kind of direct personal participation in the deprivation, but also by setting in motion a series of  
9 acts by others which the actor knows or reasonably should know would cause others to inflict the  
10 constitutional injury."); Johnson v. Duffy, 588 F.2d 740, 743-44 (9th Cir. 1978). Because the  
11 F&R recommends denying the motion to dismiss as to Sanzberro, the Court will adopt this aspect  
12 of the F&R.

13 With respect to Officers Tarkenton and Christian, Plaintiff alleges that these officers  
14 improperly searched his room. However, Officers Tarkenton and Christian's search was the result  
15 of Sanzberro's report that Plaintiff had contraband. See FAC at § I p.6. The fact that the search  
16 was conducted in the wake of a contraband report from a CSH staff member shows that the  
17 officers' search was not arbitrary, and there are no factual allegations that suggest Tarkenton and  
18 Christian's search was retaliatory in nature. Cf. Meyers, 303 F. App'x 513; Hydrick, 500 F.3d at  
19 993. The search of a civilly detained SVP's room for contraband serves the legitimate  
20 governmental interest in maintaining security and effective management of CSH. See Hydrick,  
21 500 F.3d at 993; Rogers v. Grijalva, 2013 U.S. Dist. LEXIS 143349, \*24-\*25 (E.D. Cal. Oct. 1,  
22 2013); Hazeltine v. Montoya, 2012 U.S. Dist. LEXIS 30194, \*18-\*19 (E.D. Cal. Mar. 7, 2012).  
23 Although Plaintiff has alleged that the search was without even reasonable suspicion, that  
24 allegation has significance as to Sanzberro. There are no allegations that Tarkenton and Christian  
25 knew that Sanzberro had no basis for his report of contraband, and it is Sanzberro's report that  
26 provides the legitimate basis for conducting a search of Plaintiff's room. Considering the context  
27 of the environment in which the officers' search was performed, the basis for the officers' search,  
28 and the legitimate governmental interest in the safety and management of CSH, the FAC's

1 allegations fail to show that the officers' search of Plaintiff's room was unreasonable. See Naylor  
2 v. Allenby, 2013 U.S. Dist. LEXIS 169846, \*7-\*8 (E.D. Cal. Dec. 2, 2013) (finding claims that  
3 officers searched the room of a civilly detained SVP after a report of contraband failed to state a  
4 claim); Griego v. Allenby, 2012 U.S. Dist. LEXIS 143419, \*6 (E.D. Cal. Oct. 3, 2012) (same); cf.  
5 Hydrick, 500 F.3d at 993. Accordingly, Plaintiff's Fourth Amendment claim against the officers  
6 fails. Because the F&R recommended denying the officers' motion to dismiss, the Court will  
7 respectfully decline to adopt this aspect of the F&R.

### 8 9 **CONCLUSION**

10 Upon further review of the FAC, the F&R, and the motion to dismiss, the Court will adopt  
11 the F&R with respect to official capacity claims, the statute of limitations defense, and the Fourth  
12 Amendment Claim against Sanzberro. The Court declines to adopt the F&R as to the Fourth  
13 Amendment claims against Officers Tarkenton and Christian. The FAC's allegations show a  
14 legitimate basis for the officers to search, and that the search furthered the government's interests  
15 in the safety and management of CSH. However, this order represents the first time that Plaintiff  
16 has been informed of this deficiency. The Court will give Plaintiff the opportunity to file an  
17 amended complaint that explains why the officers' "pursuing reported contraband was  
18 unreasonable under the circumstances and in light of the fact that safety and security [and effective  
19 management] are legitimate institutional concerns." Naylor, 2013 U.S. Dist. LEXIS 169846 at \*8.

### 20 21 **ORDER**

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. The F&R filed on March 5, 2014 (Doc. No. 62), is ADOPTED in PART as discussed  
24 above;
- 25 2. Defendants' motion to dismiss based on the statute of limitations is DENIED;
- 26 3. Defendants' motion to dismiss Plaintiff's Fourth Amendment claim is GRANTED as to  
27 Defendants Tarkenton and Christian, but DENIED as to Defendant Sanzberro;
- 28 4. Defendants' motion to dismiss the official capacity claims is GRANTED;

- 1 5. Within twenty-one (21) days of service of this order, Plaintiff shall file an amended  
2 complaint that is consistent with this order and the March 13, 2013 Order Dismissing  
3 Certain Claims (Doc. No. 34);<sup>4</sup> and  
4 6. This matter is referred to the Magistrate Judge for further proceedings.

5 IT IS SO ORDERED.

6 Dated: May 12, 2014

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9 SENIOR DISTRICT JUDGE

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28 <sup>4</sup> Doc. No. 34 dismissed all claims in the FAC with prejudice except for the Fourth Amendment claims against Tarkenton, Christian, and Sanzberro. See Doc. No. 34. If Plaintiff does not file a timely amended complaint, this case shall proceed only on the Fourth Amendment unreasonable search claim against Defendant Sanzberro.