

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TROY MITCHELL NAYLOR,
Plaintiff,
v.
CLIFF ALLENDBY, et al.,
Defendants

CASE NO. 1:11-cv-01649-MJS

ORDER DIRECTING PLAINTIFF TO FILE AN AMENDED COMPLAINT OR NOTIFY THE COURT OF HIS DESIRE TO PROCEED ONLY ON HIS COGNIZABLE CLAIMS

(ECF NO. 1)

PLAINTIFF'S RESPONSE DUE WITHIN THIRTY (30) DAYS

SCREENING ORDER

I. PROCEDURAL HISTORY

Plaintiff Troy Mitchell Naylor, a civil detainee proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on September 29, 2011. (ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 4.)

II. SCREENING REQUIREMENT

Pursuant to 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the Complaint for sufficiency to state a claim. The Court must dismiss a complaint or portion

1 thereof if it determines that the action has raised claims that are legally "frivolous or
2 malicious," "fails to state a claim upon which relief may be granted," or that seek
3 monetary relief from a defendant who is immune from such relief. 28 U.S.C. §
4 1915(e)(2)(B). "Notwithstanding any filing fee, or any portion thereof, that may have
5 been paid, the court shall dismiss the case at any time if the court determines that . . .
6 the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C.
7 § 1915(e)(2)(B)(ii).

8 Section 1983 "provides a cause of action for the 'deprivation of any rights,
9 privileges, or immunities secured by the Constitution and laws' of the United States."
10 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
11 Section 1983 is not itself a source of substantive rights, but merely provides a method for
12 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
13 (1989).

14 **III. SUMMARY OF COMPLAINT**

15 The Complaint identifies the following individuals as Defendants: (1) Cliff
16 Allendby, Acting Executive Director, Department of Mental Health; (2) Pam Ahlin,
17 Executive Director, Coalinga State Hospital (CSH); (3) Ron Harmon, Chief of Hospital
18 Police; and (4) Jerry Duvall, Sergeant, Hospital Police.

19 Plaintiff alleges the following:

20 On July 6, 2009, hospital police searched Plaintiff's room and confiscated all of
21 Plaintiff's electronic devices based on another detainee's assertion that Plaintiff
22 possessed illegal material on his computer. Plaintiff filed suit in superior court
23 challenging the search. Defendants were served with Plaintiff's suit on September 13,
24 2011. Three days after service, Defendant Duvall and other officers retaliated against
25 Plaintiff by conducting another search. Plaintiff's computer and other electronics were
26 seized and still have not been returned. The Complaint alleges violations of Plaintiff's
27 Fourth Amendment right to be free from unreasonable searches and seizures and
28 Fourteenth Amendment rights to due process and equal protection.

1 **IV. ANALYSIS**

2 **A. Section 1983**

3 To state a claim under Section 1983, a plaintiff must allege two essential
4 elements: (1) that a right secured by the Constitution or laws of the United States was
5 violated and (2) that the alleged violation was committed by a person acting under the
6 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda
7 Cnty., 811 F.2d 1243, 1245 (9th Cir. 1987).

8 A complaint must contain “a short and plain statement of the claim showing that
9 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
10 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
11 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct.
12 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
13 Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim that is
14 plausible on its face.’” Id. Facial plausibility demands more than the mere possibility
15 that a defendant committed misconduct and, while factual allegations are accepted as
16 true, legal conclusions are not. Id. at 1949-50.

17 **B. Linkage Requirement**

18 Under § 1983, Plaintiff must demonstrate that each defendant personally
19 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th
20 Cir. 2002). This requires the presentation of factual allegations sufficient to state a
21 plausible claim for relief. Iqbal, 129 S.Ct. at 1949-50; Moss v. U.S. Secret Service, 572
22 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of meeting
23 this plausibility standard. Id.

24 The statute requires that there be an actual connection or link between the
25 actions of the defendants and the deprivation alleged to have been suffered by the
26 plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978).
27 Government officials may not be held liable for the actions of their subordinates under a
28 theory of respondeat superior. Iqbal, 129 S.Ct. at 1948. Since a government official

1 cannot be held liable under a theory of vicarious liability in § 1983 actions, Plaintiff must
2 plead sufficient facts showing that the official has violated the Constitution through his
3 own individual actions. Id. at 1948. In other words, to state a claim for relief under §
4 1983, Plaintiff must link each named defendant with some affirmative act or omission
5 that demonstrates a violation of Plaintiff's federal rights.

6 Defendant Duvall is the only individual identified by name in Plaintiff's factual
7 summary. The Complaint fails to establish a connection between any of the remaining
8 Defendants and the alleged violation of Plaintiff's rights.

9 Plaintiff does allege that Defendants Allenby, Ahlin, and Harmon were supervisors
10 responsible for operations at CSH, but he offers nothing to suggest they were actually
11 involved in the matter at issue. The mere fact one or more of them may have supervised
12 the individuals responsible for a violation is not enough. Defendants may only be held
13 liable in a supervisory capacity if they "participated in or directed the violations, or knew
14 of the violations and failed to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045
15 (9th Cir. 1989).

16 The Court will grant Plaintiff an opportunity to amend. To state a claim under §
17 1983, Plaintiff must "set forth specific facts as to each individual defendant's" deprivation
18 of protected rights. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988). That is to
19 say, Plaintiff must explain in his own words exactly how each Defendant contributed to
20 the violation of his rights. Plaintiff must provide specific examples of misconduct and
21 avoid overly broad or vague allegations. If Plaintiff cannot describe how a Defendant
22 violated his rights, the Court will dismiss Plaintiff's claims against that Defendant with
23 prejudice.

24 **C. Fourth Amendment**

25 The Fourth Amendment right to be secure against unreasonable searches and
26 seizures extends to those persons under civil confinement. Hydrick v. Hunter, 500 F.3d
27 978, 993 (9th Cir. 2007), vacated on other grounds, 129 S.Ct. 2431 (2009). The
28 reasonableness of a particular search or seizure is determined by reference to the

1 detention context. Id. “Whether a search is reasonable is determined by assessing, on
2 the one hand, the degree to which it intrudes upon an individual's privacy and, on the
3 other, the degree to which it is needed for the promotion of legitimate governmental
4 interests.” Samson v. California, 547 U.S. 843, 848 (2006) (internal quotation marks
5 omitted). Civil detainees have “a diminished expectation of privacy after commitment to
6 a custodial facility.” Bell v. Wolfish, 441 U.S. 520, 557 (1979). Legitimate concerns
7 justifying searches and seizures are “the safety and security of guards and others in the
8 facility, order within the facility and the efficiency of the facility's operations.” Hydrick,
9 500 F.3d at 993 (internal quotation marks omitted). However, “a search or seizure that is
10 arbitrary, retaliatory, or clearly exceeds the legitimate purpose of detention” violates the
11 Fourth Amendment. Id.

12 Plaintiff complains that the Defendants are responsible for two unreasonable
13 searches in violation of his Fourth Amendment rights. The first search, on July 6, 2009,
14 was conducted by unspecified members of the hospital police in response to a report
15 that Plaintiff possessed contraband. Such allegations fail to state a claim. Plaintiff does
16 not specify which, if any, of the Defendants are responsible for the search or why the
17 search was unreasonable. To state a claim Plaintiff must link a named Defendant to the
18 alleged violation, Jones, 297 F.3d at 934, and must explain why pursuing reported
19 contraband was unreasonable under the circumstances and in light of the fact that safety
20 and security are legitimate institutional concerns, Hydrick, 500 F.3d at 993.

21 The second search, on September 16, 2011, was allegedly conducted three days
22 after the Defendants were served with a lawsuit filed by Plaintiff. Defendant Duvall
23 participated in this search and, according to Plaintiff, identified no basis for his suspicion
24 that Plaintiff possessed contraband. Plaintiff's allegations, taken as true at this stage of
25 the proceedings, are sufficient to state a Fourth Amendment claim. Id.

26 **D. First Amendment**

27 Allegations of retaliation against a prisoner's First Amendment rights to speech or
28 to petition the government may support a section 1983 claim. Silva v. Di Vittorio, 658

1 F.3d 1090, 1104 (9th Cir. 2011); see also Valandingham v. Bojorquez, 866 F.2d 1135
2 (9th Cir. 1989); Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995); and Short v.
3 Sanzberro, 2009 WL 5110676, *5 (E.D. Cal. Dec. 18, 2009) (“Civil detainees are
4 protected from retaliation by the First Amendment.”). “Within the prison context, a viable
5 claim of First Amendment retaliation entails five basic elements: (1) An assertion that a
6 state actor took some adverse action against an inmate (2) because of (3) that prisoner’s
7 protected conduct, and that such action (4) chilled the inmate’s exercise of his First
8 Amendment rights, and (5) the action did not reasonably advance a legitimate
9 correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005); accord
10 Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012); Silva, 658 at 1104; Brodheim
11 v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).

12 The Complaint alleges that Defendant Duvall led a search of Plaintiff’s room and
13 arbitrarily seized personal property because Plaintiff had served the Defendant with a
14 lawsuit three days earlier. Plaintiff has satisfied the third element of his retaliation claim;
15 prisoners have a protected right to access the courts. Rhodes, 408 F.3d at 567. Plaintiff
16 has also satisfied the first, second, and fourth elements of his claim. Arbitrarily
17 confiscating and withholding property qualifies as an adverse action. Id. at 568. A
18 plaintiff may rely on circumstantial evidence to establish the motive or intent of the
19 defendant. Bruce v. Ylst, 351 F.3d 1283, 1289 (9th Cir. 2003) (finding that a prisoner
20 established a triable issue of fact regarding prison officials’ retaliatory motives by raising
21 issues of suspect timing, evidence, and statements); Hines v. Gomez, 108 F.3d 265,
22 267-68 (9th Cir. 1997); Pratt, 65 F.3d at 808 (“timing can properly be considered as
23 circumstantial evidence of retaliatory intent”). In this case Plaintiff alleges that Defendant
24 Duvall acted three days after being served.

25 The fifth prong requires a prisoner to allege that “the prison authorities’ retaliatory
26 action did not advance legitimate goals of the correctional institution or was not tailored
27 narrowly enough to achieve such goals.” Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir.
28 1985). This is not a high burden to reach. See id. (prisoner’s allegations that search

1 was arbitrary and capricious sufficient to satisfy this inquiry). The Complaint alleges that
2 Defendant Duvall had no reasonable basis to justify the search. Thus, the Court finds
3 that Plaintiff has satisfied the fifth and final element of his retaliation claim against
4 Defendant Duvall.

5 **E. Fourteenth Amendment**

6 1. Procedural Due Process

7 The Due Process Clause protects prisoners and, by extension, civil detainees¹,
8 from being deprived of property without due process of law, Wolff v. McDonnell, 418 U.S.
9 539, 556 (1974), and both groups have a protected interest in their personal property,
10 Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974). However, while an authorized,
11 intentional deprivation of property is actionable under the Due Process Clause, see
12 Hudson v. Palmer, 468 U.S. 517, 532, n. 13 (1984) (citing Logan v. Zimmerman Brush
13 Co., 455 U.S. 422, 435–36 (1982)); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985),
14 neither negligent nor unauthorized intentional deprivations of property by a governmental
15 employee “constitute a violation of the procedural requirements of the Due Process
16 Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss
17 is available,” Hudson, 468 U.S. at 533.

18 Plaintiff alleges that he was deprived of his property without due process twice,
19 once on July 6, 2009 and again on September 16, 2011. The first search appears to
20 have been an authorized and intentional deprivation that may be actionable under the
21 Due Process Clause. An authorized deprivation is one carried out pursuant to
22 established state procedures, regulations, or statutes. Piatt v. McDougall, 773 F.2d
23 1032, 1036 (9th Cir. 1985); see also Knudson v. City of Ellensburg, 832 F.2d 1142, 1149
24 (9th Cir. 1987). The Complaint alleges that unspecified members of the hospital police
25 searched Plaintiff’s room in response to a report of contraband. The search appears to
26 have been conducted according to hospital procedure. However, as discussed in

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¹ “[T]he rights afforded prisoners set a floor for those that must be afforded [civil detainees] Hydrick
v. Hunter, 500 F.3d 978, 993 (9th Cir. 2007), vacated on other grounds, 129 S.Ct. 2431 (2009).

1 section IV. C., above, Plaintiff does not specify which, if any, of the Defendants are
2 responsible for the July 6, 2009 search and therefore fails to state a claim.

3 Plaintiff alleges that the second search was retaliatory in violation of his First
4 Amendment rights and was not motivated by institutional security. Plaintiff has an
5 adequate post-deprivation remedy under California law and therefore, he may not
6 pursue a due process claim arising out of the unlawful confiscation of his personal
7 property on September 16, 2011. Barnett v. Centoni, 31 F.3d 813, 816-17 (9th Cir.
8 1994) (citing Cal. Gov't Code §§810-895).

9 2. Equal Protection

10 Plaintiff also alleges that the Defendants' conduct violated his rights to equal
11 protection. The Equal Protection Clause requires that persons who are similarly situated
12 be treated alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439
13 (1985); Hartmann v. California Dep't of Corr. & Rehab., 707 F.3d 1114, 1123 (9th Cir.
14 2013); Furnace v. Sullivan, 705 F.3d 1021, 1030 (9th Cir. 2013); Shakur v. Schriro, 514
15 F.3d 878, 891 (9th Cir. 2008). An equal protection claim may be established by showing
16 that Defendants intentionally discriminated against Plaintiff based on his membership in
17 a protected class, Hartmann, 707 F.3d at 1123; Furnace, 705 F.3d at 1030; Comm.
18 Concerning Cmt. Improvement v. City of Modesto, 583 F.3d 690, 702-03 (9th Cir.
19 2009); Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003); Lee v. City of Los
20 Angeles, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals were
21 intentionally treated differently without a rational relationship to a legitimate state
22 purpose, Engquist v. Oregon Department of Agriculture, 553 U.S. 591, 601-02 (2008);
23 Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v.
24 Behrens, 546 F.3d 580, 592 (9th Cir. 2008); North Pacifica LLC v. City of Pacifica, 526
25 F.3d 478, 486 (9th Cir. 2008).

26 Plaintiff asserts that his right to equal protection was violated but fails to
27 specifically address the claim in his summary of facts. The Complaint does not allege
28 Plaintiff was a member of a protected class or that other detainees were treated

1 differently. Since the basis for Plaintiff's claim is not apparent, the Court will grant leave
2 to amend. Should Plaintiff choose to amend, he must allege facts clearly demonstrating
3 a violation of his right to equal protection.

4 **V. CONCLUSION**

5 The Complaint states claims against Defendant Duvall for the violation of
6 Plaintiff's First and Fourth Amendment rights, but does not state a claim against any of
7 the remaining Defendants. The Court will provide Plaintiff with an opportunity to file an
8 amended complaint curing the deficiencies identified by the Court in this order. Noll v.
9 Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).

10 However, Plaintiff is advised that he does not have to file an amended complaint if
11 he is agreeable to proceeding only on the claims the Court found, above, to be
12 cognizable. If he wishes to so proceed, Plaintiff shall notify the Court in writing. The
13 Court will then dismiss his other claims and provide Plaintiff with a summons and USM-
14 285 form for completion and return. Upon receipt of the forms, the Court will direct the
15 United States Marshal to initiate service of process on Defendant Duvall.

16 If Plaintiff opts to amend, his amended complaint should be brief, Fed. R. Civ. P.
17 8(a), but must state what each named Defendant did that led to the deprivation of
18 Plaintiff's constitutional or other federal rights, Iqbal, 556 U.S. at 677-78. Although
19 accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief
20 above the speculative level . . ." Twombly, 550 U.S. at 555 (citations omitted). Further,
21 Plaintiff may not change the nature of this suit by adding new, unrelated claims in his
22 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"
23 complaints).

24 Finally, an amended complaint supercedes the original complaint, Forsyth v.
25 Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
26 (9th Cir. 1987), and must be "complete in itself without reference to the prior or
27 superceded pleading." Local Rule 220.

28 Based on the foregoing, it is HEREBY ORDERED that:

1 1. The Clerk's Office shall send Plaintiff a civil rights complaint form;

2 2. Within thirty (30) days, Plaintiff must either:

3 a. File an amended complaint curing the deficiencies identified by the

4 Court in this order, OR

5 b. Notify the Court in writing that he does not wish to file an amended

6 complaint and is willing to proceed only on his cognizable claim; and

7 3. If Plaintiff fails to comply with this order, this action will be dismissed for

8 failure to obey a court order.

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11 IT IS SO ORDERED.

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13 Dated: November 27, 2013

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16 */s/ Michael J. Seng*
17 UNITED STATES MAGISTRATE JUDGE

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