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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LEONARD JOSE GRIEGO,

Plaintiff,

v.

CLIFF ALLENBY, et al.,

Defendants.

CASE NO. 1:11-cv-01676-SKO PC

FIRST SCREENING ORDER DISMISSING  
FOURTH AMENDMENT CLAIM WITH  
PREJUDICE AND GRANTING LEAVE TO  
AMEND REMAINING CLAIMS

(Doc. 1)

THIRTY-DAY DEADLINE

**First Screening Order**

**I. Screening Requirement and Standard**

Plaintiff Leonard Jose Griego, a civil detainee proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on October 4, 2011. The Court is required to screen Plaintiff’s complaint and dismiss the case, in whole or in part, if the Court determines it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

A complaint must contain “a short and plain statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts “are not required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

1 Under section 1983, Plaintiff must demonstrate that each defendant personally participated  
2 in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires  
3 the presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 556 U.S.  
4 at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of  
5 misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S. at 678; Moss, 572 F.3d  
6 at 969.

## 7 **II. Discussion**

### 8 **A. Summary of Allegations**

9 Plaintiff, a civil commitment patient at Coalinga State Hospital (CSH) in Coalinga,  
10 California, alleges that Defendants Cliff Allenby, Acting Executive Director of the Department of  
11 Mental Health; Pam Ahlin, Executive Director of CSH; Ron Harmon, Chief of Hospital Police at  
12 CSH; and Sergeant Jerry Duvall violated his rights under the federal and state constitutions.

13 On September 16, 2011, six hospital police officers and a psychiatric technician, under the  
14 direction of Defendant Duvall, entered Plaintiff's room, informed him that they suspected he may  
15 have an internet device, searched his room, and videotaped the search – all without his permission.  
16 Defendant Duvall confiscated Plaintiff's Portable Playstation, power cord, DVDs, and a USB storage  
17 device that had been given to Plaintiff minutes earlier by another patient. Defendant Duvall  
18 informed Plaintiff that they would return the property that day, but it continues to be held under the  
19 guise of an investigation.

20 Plaintiff alleges claims based on an unreasonable search and seizure under the Fourth  
21 Amendment, the denial of due process and equal protection under the Fourteenth Amendment, and  
22 the invasion of privacy, which also falls within the protection of the Fourteenth Amendment.  
23 Plaintiff seeks damages and injunctive relief.

### 24 **B. Defendants Allenby, Ahlin, and Harmon**

25 Under section 1983, Plaintiff must link the named defendants to the participation in the  
26 violation at issue. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d 1011,  
27 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones, 297  
28 F.3d at 934. Liability may not be imposed on supervisory personnel under the theory of *respondeat*

1 *superior*, Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at 1235, and as executives, administrators, or  
2 supervisors, Defendants Allenby, Ahlin, and Harmon may only be held liable if they “participated  
3 in or directed the violations, or knew of the violations and failed to act to prevent them,” Taylor v.  
4 List, 880 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir.  
5 2011); Corales v. Bennett, 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark County School  
6 Board of Trustees, 479 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204  
7 (9th Cir. 1997). Some culpable action or inaction must be attributable to Defendants. Starr, 652  
8 F.3d at 1205; Jeffers v. Gomez, 267 F.3d 895, 914-15 (9th Cir. 2001); Redman v. County of San  
9 Diego, 942 F.2d 1435, 1446-47 (9th Cir. 1991); Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989).

10 Plaintiff’s complaint is devoid of any factual allegations linking Defendants Allenby, Ahlin,  
11 and Harmon to the violation of his federal rights. Therefore, Plaintiff fails to state a claim against  
12 them under section 1983.

13 **B. Defendant Duvall**

14 **1. Fourth Amendment Claim**

15 The Fourth Amendment prohibits unreasonable searches. Bell v. Wolfish, 441 U.S. 520, 558,  
16 99 S.Ct. 1861 (1979); Byrd v. Maricopa County Sheriff’s Office, 629 F.3d 1135, 1140 (9th Cir.  
17 2011); Michenfelder v. Sumner, 860 F.2d 328, 332 (9th Cir. 1988). For the Fourth Amendment to  
18 apply, there must be a “reasonable expectation of privacy in the area invaded.” Espinosa v. City and  
19 County of San Francisco, 598 F.3d 528, 533 (9th Cir. 2010); Hudson v. Palmer, 468 U.S. 517, 525,  
20 104 S.Ct. 3194 (1984); Bell v. Wolfish, 441 U.S. 520, 556-57, 99 S.Ct. 1861 (1979).

21 In this instance, Plaintiff’s room at CSH was searched based on the suspicion that he had  
22 contraband, although none was found. Plaintiff contends that because a search warrant for his room  
23 was not obtained, his rights under the Fourth Amendment were violated.

24 While Plaintiff is not a convicted criminal, he is involuntarily serving a civil commitment  
25 term at a secure facility; he is not a free individual with a full panoply of rights. Civil detainees are  
26 entitled to more considerate treatment and conditions of confinement than criminals whose  
27 conditions of confinement are designed to punish, Youngberg v. Romeo, 457 U.S. 307, 322, 102  
28 S.Ct. 2452 (1982) (quotation marks omitted), but maintaining facility security and effectively

1 managing the facility are unquestionably legitimate, non-punitive government interests, Jones v.  
2 Blanas, 393 F.3d 918, 932 (9th Cir. 2004) (quotation marks omitted).

3         The contours of an involuntarily confined civil detainee’s right to privacy in his room in a  
4 secure treatment facility are unclear, but assuming Plaintiff retains *any* reasonable expectation of  
5 privacy at all in his room at CSH, it would necessarily be of a diminished scope given Plaintiff’s  
6 civil confinement. See Bell, 441 U.S. at 556-57 (discussing detainee’s expectation of privacy in cell  
7 or room at detention facility). Here, Plaintiff’s claim arises from a room search which was initiated  
8 based on the suspicion that Plaintiff had contraband. Whatever diminished expectation of privacy  
9 Plaintiff may have in his room at CSH, it cannot extend so far as to encompass an expectation of  
10 privacy in remaining free from suspicion-based contraband searches. See Bell, 441 U.S. at 557.

11         Other courts which have considered the issue have concluded that no Fourth Amendment  
12 claim lies because civil detainees do not have a reasonable expectation of privacy in their rooms.  
13 Rainwater v. Bell, No. 2:10-cv-1727 GGH P, 2012 WL 3276966, at \*11 (E.D.Cal. Aug. 9, 2012)  
14 (finding, on summary judgment, that civil detainee did not have a reasonable expectation of privacy  
15 in his jail cell); Gomez v. Davis, No. 2:10-cv-708-FtM-29DNF, 2011 WL 1058919, at \*2-3  
16 (M.D.Fla. Mar. 21, 2011) (civil detainee’s Fourth Amendment claim dismissed because he did not  
17 have a reasonable expectation of privacy in his dormitory room); Pyron v. Ludeman, Nos. 10-3759  
18 (PJS/JJG), 10-4236 (PJS/JJG), 2011 WL 3293523, at \*6 (D.Minn. Jun. 6, 2011) (finding motion to  
19 dismiss should be granted because a search of a civil detainee’s personal items in his cell does not  
20 violate the Fourth Amendment), report and recommendation adopted in full, 2012 WL 1597305  
21 (D.Minn. Jul. 29, 2011); Banda v. Corzine, No. 07-4508 (WJM), 2007 WL 3243917, at \*7-8 (D.N.J.  
22 Nov. 1, 2007) (Fourth Amendment “illegal search” claim by civil detainees dismissed with prejudice  
23 because any expectation of privacy yielded to legitimate governmental interest in keeping facility  
24 free of controlled substances); Riley v. Doyle, No. 06-C-574-C, 2006 WL 2947453, at \*5 (W.D.Wis.  
25 Oct. 16, 2006) (civil detainee denied leave to proceed on Fourth Amendment claim arising out of  
26 repeated contraband searches because there is no reasonable expectation of privacy in avoiding  
27 routine cell inspections and searches); compare Stearns v. Stoddard, No. C11-5422-BHS-JRC, 2012  
28 WL 1596965, at \*3 (W.D.Wash. Apr. 11, 2012) (recognizing that whether a civil detainee housed

1 in a secure facility has any expectation of privacy in his room is an open question and finding  
2 entitlement to summary judgment on Fourth Amendment claim based on qualified immunity), report  
3 and recommendation adopted in full, 2012 WL 1597305 (WD.Wash. May 7, 2012). Accordingly,  
4 the Court finds that Plaintiff does not have a reasonable expectation of privacy in his room at CSH  
5 under the circumstances alleged and his Fourth Amendment claim fails as a matter of law. It shall  
6 be dismissed, with prejudice.

7 **2. Equal Protection Claim**

8 The Equal Protection Clause requires that persons who are similarly situated be treated alike.  
9 City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439, 105 S.Ct. 3249 (1985); Shakur  
10 v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). An equal protection claim may be established by  
11 showing that Defendants intentionally discriminated against Plaintiff based on his membership in  
12 a protected class, Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d 690, 702-03  
13 (9th Cir. 2009); Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), Lee v. City of Los Angeles,  
14 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals were intentionally treated  
15 differently without a rational relationship to a legitimate state purpose, Engquist v. Oregon  
16 Department of Agriculture, 553 U.S. 591, 601-02, 128 S.Ct. 2146 (2008); Village of Willowbrook  
17 v. Olech, 528 U.S. 562, 564, 120 S.Ct. 1073 (2000); Lazy Y Ranch Ltd. v. Behrens, 546 F. 3d 580,  
18 592 (9th Cir. 2008); North Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th Cir. 2008).

19 Although Plaintiff alleges an equal protection claim, his complaint is devoid of any  
20 allegations supporting a claim that Defendant Duvall intentionally discriminated against him.

21 **3. Due Process Claims**

22 **a. Property Deprivation**

23 The Due Process Clause of the Fourteenth Amendment of the United States Constitution  
24 protects Plaintiff from being deprived of property without due process of law, Wolff v. McDonnell,  
25 418 U.S. 539, 556, 94 S.Ct. 2963 (1974), and Plaintiff has a protected interest in his personal  
26 property, Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974). Authorized, intentional deprivations  
27 of property are actionable under the Due Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532,  
28 n.13, 104 S.Ct. 3194 (1984); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985), but the Due

1 Process Clause is violated only when the agency “prescribes and enforces forfeitures of property  
2 without underlying statutory authority and competent procedural protections,” Nevada Dept. of  
3 Corrections v. Greene, 648 F.3d 1014, 1019 (9th Cir. 2011) (citing Vance v. Barrett, 345 F.3d 1083,  
4 1090 (9th Cir. 2003)) (internal quotations omitted).

5 In this instance, while Plaintiff alleges that his personal property was confiscated, he fails to  
6 allege any facts supporting a claim that he was denied the procedural due process he was due.

7 **b. Privacy Claim**

8 Finally, Plaintiff alleges that videotaping his person and his bed area during the search of his  
9 room violated his right of privacy.

10 “[O]ne aspect of the liberty protected by the Due Process Clause of the Fourteenth  
11 Amendment is a right of personal privacy or a guarantee of certain areas or zones of privacy.” Marsh  
12 v. County of San Diego, 680 F.3d 1148, 1153 (9th Cir. 2012) (citing Carey v. Population Servs. Int’l,  
13 431 U.S. 678, 684, 97 S.Ct. 2010 (1977)) (internal quotation marks omitted). However, “rights  
14 found in the guarantee of personal privacy are limited to those which are fundamental or implicit in  
15 the concept of ordered liberty.” Grummett v. Rushen, 779 F.2d 491, 493-94 (9th Cir. 1985) (citing  
16 Roe v. Wade, 410 U.S. 113, 152, 93 S.Ct. 705 (1973)) (internal quotation marks omitted).

17 While Plaintiff retains a limited right of privacy while civilly committed, his complaint is  
18 devoid of any facts which suggest that videotaping the room search infringed upon that right.

19 **III. Conclusion and Order**

20 In conclusion, Plaintiff’s complaint fails to state any claims under section 1983.<sup>1</sup> With the  
21 exception of Plaintiff’s Fourth Amendment claim, some of the deficiencies may be capable of being  
22 cured through amendment and therefore, the Court will provide Plaintiff with the opportunity to file  
23 an amended complaint. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809  
24 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new,  
25 unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

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27 <sup>1</sup> Given Plaintiff’s failure to state any claims under federal law, the Court declines to reach whether or not  
28 Plaintiff may have redress available under state law. 28 U.S.C. § 1367(a); Herman Family Revocable Trust v. Teddy  
Bear, 254 F.3d 802, 805 (9th Cir. 2001).

1 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what  
2 each named defendant did that led to the deprivation of Plaintiff's constitutional rights, Iqbal, 556  
3 U.S. at 676-77. Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a  
4 right to relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations omitted).

5 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa County,  
6 Nos. 09-15806, 09-15703, 2012 WL 3711591, at \*1 n.1 (9th Cir. Aug. 29, 2012) (en banc), and it  
7 must be "complete in itself without reference to the prior or superceded pleading," Local Rule 220.

8 Accordingly, it is HEREBY ORDERED that:

- 9 1. Plaintiff's Fourth Amendment search claim is dismissed, with prejudice, for failure  
10 to state a claim;
- 11 2. Plaintiff's equal protection and due process claims are dismissed for failure to state  
12 a claim, with leave to amend;
- 13 3. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 14 4. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
15 amended complaint; and
- 16 5. If Plaintiff fails to file an amended complaint in compliance with this order, this  
17 action will be dismissed, with prejudice, for failure to state a claim under section  
18 1983.

19  
20 IT IS SO ORDERED.

21 **Dated:** October 2, 2012

21 /s/ Sheila K. Oberto  
22 UNITED STATES MAGISTRATE JUDGE