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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 ROBIN GILLEN STARR,

12 Plaintiff,

13 vs.

14 CDCR,

15 Defendant.
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1:11-cv-02108-AWI-GSA-PC

FINDINGS AND RECOMMENDATIONS,
RECOMMENDING THAT THIS ACTION BE
DISMISSED FOR FAILURE TO STATE A
CLAIM
(Doc. 68.)

OBJECTIONS, IF ANY, DUE WITHIN
THIRTY DAYS

17 **I. BACKGROUND**

18 Robin Gillen Starr ("Plaintiff") is a state prisoner proceeding pro se in this civil rights
19 action pursuant to 42 U.S.C. § 1983. Plaintiff filed the Complaint commencing this action on
20 December 22, 2011. (Doc. 1.) On January 23, 2013, the court dismissed the Complaint for
21 failure to state a claim and violation of Rules 8(a) and 18(a), with leave to amend. (Doc. 57.)
22 On April 12, 2013, Plaintiff filed an Amended Complaint, which is now before the court for
23 screening. (Doc. 68.)

24 **II. SCREENING REQUIREMENT**

25 The court is required to screen complaints brought by prisoners seeking relief against a
26 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
27 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
28 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or

1 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
2 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
3 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
4 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

5 A complaint is required to contain “a short and plain statement of the claim showing
6 that the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
7 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
8 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct.
9 1937, 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955
10 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
11 unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
12 (internal quotation marks and citation omitted). Plaintiff must set forth “sufficient factual
13 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Iqbal 556 U.S.
14 at 678. While factual allegations are accepted as true, legal conclusions are not. Id. The mere
15 possibility of misconduct falls short of meeting this plausibility standard. Id. at 678-79; Moss
16 v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).

17 **III. SUMMARY OF AMENDED COMPLAINT**

18 Plaintiff is presently incarcerated at the California Men’s Colony East in San Luis
19 Obispo, California. The events at issue allegedly occurred at the Sierra Conservation Center in
20 Jamestown, California, when Plaintiff was incarcerated there. Plaintiff names as defendants the
21 State of California, Governor Brown, Kamala Harris, M. Cate (CDCR Director), Warden
22 Gipson, CCI Scott, Associate Warden Fields, Saltowitz (LCSW), Frank Chavez, Captain
23 Siebert, and Warden Valenzuela.

24 Plaintiff alleges that on October 17, 2007, he was falsely placed under arrest for
25 possession of narcotics. Plaintiff alleges that co-Plaintiff Donald Roots was also falsely
26 arrested. Plaintiff seeks to bring a class action for an unlimited number of John Doe plaintiffs,
27 based on for illegal sentences, heavy penalties, and false enhancements. Plaintiff alleges that
28 he and all inmates at Corcoran State Prison were subject to torture and mail violations.

1 Plaintiff alleges that while in administrative segregation, he was deprived of his liberty for no
2 reason. Plaintiff alleges that he went to ICC and talked to Associate Warden Fields who said to
3 turn in paperwork for release from prison. Plaintiff claims he is being illegally imprisoned,
4 denied due process and equal protection, and had his property stolen.

5 Plaintiff requests declaratory and injunctive relief, and monetary damages.

6 **III. PLAINTIFF’S CLAIMS**

7 The Civil Rights Act under which this action was filed provides:

8 Every person who, under color of [state law] . . . subjects, or
9 causes to be subjected, any citizen of the United States . . . to the
10 deprivation of any rights, privileges, or immunities secured by
11 the Constitution . . . shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for
redress.

12 42 U.S.C. § 1983. “Section 1983 . . . creates a cause of action for violations of the federal
13 Constitution and laws.” Sweaney v. Ada County, Idaho, 119 F.3d 1385, 1391 (9th Cir. 1997)
14 (internal quotations omitted). “To the extent that the violation of a state law amounts to the
15 deprivation of a state-created interest that reaches beyond that guaranteed by the federal
16 Constitution, Section 1983 offers no redress.” Id.

17 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted
18 under color of state law and (2) the defendant deprived him of rights secured by the
19 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
20 2006). “A person ‘subjects’ another to the deprivation of a constitutional right, within the
21 meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts,
22 or omits to perform an act which he is legally required to do that causes the deprivation of
23 which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). “The
24 requisite causal connection can be established not only by some kind of direct, personal
25 participation in the deprivation, but also by setting in motion a series of acts by others which
26 the actors knows or reasonably should know would cause others to inflict the constitutional
27 injury.” Johnson at 743-44).

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1 Plaintiff brings a myriad of unrelated claims in the Amended Complaint, including
2 challenges to his arrest and conviction, interference with mail, torture, deliberate indifference to
3 unsafe conditions, harassment, and violation of due process and equal protection. The court
4 finds Plaintiff's allegations to be vague and conclusory. Plaintiff fails to make factual
5 allegations against any of the defendants sufficient to state any cognizable claim under §1983.
6 Iqbal, 556 U.S. at 679; Twombly, 550 U.S. at 555.¹

7 **V. CONCLUSION AND RECOMMENDATIONS**

8 For the reasons set forth above, the Court finds that Plaintiff fails to state any
9 cognizable claims in the Amended Complaint upon which relief may be granted under § 1983.
10 The Court also finds that the deficiencies outlined above are not capable of being cured by
11 amendment, and therefore further leave to amend should not be granted. 28 U.S.C. §
12 1915(e)(2)(B)(ii); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff was
13 previously granted leave to amend the complaint, with ample guidance by the court, and
14 Plaintiff has now filed two complaints that fail to state any cognizable claims.

15 Based on the foregoing, **IT IS HEREBY RECOMMENDED** that:

- 16 1. This action be DISMISSED in its entirety for failure to state a claim upon which
17 relief may be granted under § 1983; and
- 18 2. This dismissal be subject to the "three-strikes" provision set forth in 28 U.S.C. §
19 1915(g). Silva v. Vittorio, 658 F.3d 1090, 1098 (9th Cir. 2011).

20 These findings and recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty
22 days after being served with these findings and recommendations, Plaintiff may file written
23 objections with the Court. Such a document should be captioned "Objections to Magistrate
24 Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections
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26 ¹Habeas relief is not available in a § 1983 action. See Wilkinson v. Dotson, 544 U.S. 74, 81-2, 125 S.Ct.
27 1242, 1248 (2005) ("[A] state prisoner's § 1983 action is barred (absent prior invalidation) - no matter the relief
28 sought (damages or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction
or internal prison proceedings) - *if* success in that action would necessarily demonstrate the invalidity of
confinement or its duration.")

1 within the specified time may waive the right to appeal the District Court's order. Martinez v.
2 Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 IT IS SO ORDERED.

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7 Dated: September 20, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE