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APR 18 2013

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY  DEPUTY CLERK

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EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

5 Plaintiff Proceeding In Pro Se,
6 28 U.S.C. Section 1654

7 **UNITED STATES DISTRICT COURT FOR THE**
8 **EASTERN DISTRICT OF CALIFORNIA**
9 **FRESNO DIVISION**

10 Michael B. Williams

1:13cv0556 MJS(PC)

Case No:

11 Plaintiff,

**COMPLAINT FOR FIRST
12 AMENDMENT AND DUE
13 PROCESS VIOLATIONS
14 PURSUANT TO THE FEDERAL
15 CIVIL RIGHTS ACT OF 1871,
UNDER 42 U.S.C. SECTION
1983.**

v.

14 Marissa Bigot, et al.,

15 Defendants

DEMAND FOR TRIAL BY JURY

(PC) Williams v. Bigot et al

Doc. 9 Att. 2

17 **A.**

18 **PRELIMINARY INTRODUCTION**

19 1. Plaintiff Michael B. Williams, an unconvicted-uncommitted involuntary civil
20 detainee confined at Coalinga State Hospital proceeding pro se, and in forma pauperis,
21 brings this Action under 42 U.S.C. Section 1983, pursuant to the Federal Civil Right's
22 Act of 1871, against Defendant Marissa Bigot, a Psychiatric Technician hospital care
23 provider claiming violations of plaintiff's First, Fifth and Fourteenth Amendment right's
24 arising out of Defendant Bigot's continued course of action since October 6, 2012, to the
25 present of seizing, opening and reading both his outgoing and incoming legal and
26 personal hospital mail in retaliation against him for complaining previously on November
27 9, 2012, and again on November 22, 2012, regarding the deliberate interference by
28 Defendant with Plaintiff's confidential correspondences to the Court Clerk in a pending

1 federal litigation before the United States Court of Appeals for the Ninth Circuit in San
2 Francisco, under the heading of, (Williams v. Phillips, et al., Case No. 12-15956 (9th Cir.
3 2012).)

4 2. Plaintiff also alleges Due Process violations under the Fifth and
5 Fourteenth Amendments against Defendant Daniel Wagoner, a hospital Patient's Rights
6 Advocate when exculpatory evidence that was concealed by his hospital advocacy
7 office that could have been potentially helpful to him when plaintiff filed his November 9,
8 2012, and November 22, 2012, hospital administrative grievances, violated his rights
9 under the landmark 1963 Supreme Court decision in, (Brady v. Maryland, 373 U.S. 83,
10 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).)

11 **B.**

12 **REQUEST TO PROCEED PRO SE,**
13 **AND IN FORMA PAUPERIS,**
14 **28 U.S.C. SECTION 1654**

15 3. Plaintiff alleges that the Complaint in this Action is being filed under the
16 Federal Civil Rights Statute, 42 U.S.C. Section 1983, and it should be noted by the
17 District Court that Title 42 U.S.C. Section 1997(c), does not apply where Plaintiff in this
18 action appears to be civilly detained, and is not therefore a prisoner, within the meaning
19 of the Prisoner's Litigation Reform Act, see (Page v. Torrey, 201 F.3d 1136-40 (9th Cir.
20 2000), or pursuant to Title 18 U.S.C. Section 3626 (9)(3), see also (Andrews v. King,
21 398 F.3d 1113, 1122 (9th Cir. 2005), (Turay v. Seling, 108 F.Supp.2d 1148, 1151 (W.D.
22 Wash. 2000).

23 4. Therefore, the Federal District Court, is respectfully asked to grant Plaintiff
24 full in forma pauperis status in this action under Title 28 U.S.C. Section 1654, alleging
25 Constitutional infringements of his First, Fifth and Fourteenth Amendment rights, and
26 noting that the alleged inmate trust account procedures of Title 28 U.S.C. Section 1915
27 (h), do not apply to Plaintiff in this case, see e.g. (West v. Macht, 986 F.Supp.2d 1141,
28 1143 (W.D. Wis. 1997), (Souder v. Brennan, 367 F.Supp. 808 (D.C. DC 1973), but also
see (MLB v. SLJ, 519 U.S. 102, 117 S. Ct. 555, 136 L.Ed.2d 473 (1996).

1 defendant could clearly tell that these correspondences was legal based upon the
2 Court, or attorneys mailing addresses on the outside envelopes.

3 13. Last, Plaintiff next contends that in one of his intercepted privileged legal
4 correspondences dated March 12, 2013, and addressed to the Riverside County Vital
5 Records Office in Riverside, CA, concerning family personal documents relating to his
6 deceased grandfather, the defendant on the evening of Wednesday, March 13, 2013,
7 went so far as to use one of the hospital state computers to go on-line through the
8 Internet searching for information about plaintiff's grandfather, and his estate without
9 ever telling him that the seized confidential legal letter that he wrote was not mailed, or
10 that his personal, or confidential incoming letters sent to him were not being delivered to
11 plaintiff, also violated his First Amendment Rights of free speech, see (*Phelps v. U.S.*
12 *Federal Government*, 15 F.3d 735 (8th Cir. 1994).)

13 14. Pretrial detainees possess greater constitutional rights than prisoners,
14 (*Stone v. City of San Francisco*, 968 F.2d 850, 859 Fn. 10 (9th Cir. 1992), see also
15 (*Jones v. Blanas*, 393 F.3d 918, 932 (9th Cir. 2004) (Holding that a Civil Detainee
16 awaiting civil commitment proceedings under California's SVP-Act is entitled to
17 protections at least as great as those afforded to a civilly committed person, and at least
18 as great as those afforded to a person accused, but not convicted of a crime). however,
19 since confinement claims brought by detainees often raise similar issues, federal courts
20 borrow jurisprudence from 42 U.S.C. Section 1983 prison condition cases when
21 analyzing the rights of civil detainees, see (*Gibson v. County of Washoe*, 290 F.3d
22 1175, 1187 (9th Cir. 2002) (Holding that federal courts borrow from Eighth Amendment
23 Jurisprudence when analyzing the rights of detainees even though a detainee's right to
24 be free from punishment is actually grounded in the due process clause).

25 15. That said, Plaintiff alleges that he have a protected First Amendment right
26 to file state hospital grievances, and to pursue civil rights litigation in the federal courts
27 of California, (*Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005).)

28

1 16. Plaintiff further assert that, a Section 1983 Complaint that complies with
2 the Federal Rules of Civil Procedure cannot be dismissed by the District Court on the
3 ground that his allegations of retaliation are conclusionary, or that plaintiff had not
4 alleged a chronology of events from which retaliation for exercising his First Amendment
5 rights can be inferred, see (*Swierkiewicz v. Sorema*, 534 U.S. 506, 513, 122 S.Ct. 992,
6 998-99, 152 L.Ed.2d (2002) (Held that there are no special pleading rules for prisoner
7 civil rights cases), (*Leatherman v. Tarrant County Narcotics Intelligence, and*
8 *Coordination Unit*, 507 U.S. 163, 168, 113 S.Ct. 1160, 122 L.Ed.2d 517 (1993), (*Kyle v.*
9 *Morton High School*, 144 F.3d 448, 455 (7th Cir. 1998) (per curiam). The federal rules
10 require (with irrelevant exceptions), only that the complaint state a claim, not that it
11 plead the facts that if true would establish (Subject to any defenses) that the claim was
12 valid, (*Nance v. Vieregge*, 147 F.3d 589, 590-91 (7th Cir. 1998). All that need to be
13 specified is the bare minimum of facts necessary to put the defendant on notice of the
14 claim so that he, or she can file an answer, (*McLain v. Real Estate Bd. of New Orleans*,
15 444 U.S. 232, 246 (1980), (*Beanstalk Group, Inc. v. AM General Corp.*, 283 F.3d 856,
16 863 (7th Cir. 2002), see also (*Kirksey v. R.J. Reynolds Tobacco Co.*, 168 F.3d 1039,
17 1041 (7th Cir. 9999).)

18 17. Accordingly where, as here, plaintiff has specified both in his suit, and the
19 acts of retaliation, namely by presenting a viable claim for the denial of receiving his
20 incoming hospital personal and legal mail, or defendant's attempted interference with
21 plaintiff's right of court access to a federal appeals court in a pending appeal litigation,
22 and he assert that this specification is enough to enable the defendant in this action to
23 file an answer, (*Johnson v. Stovall*, 233 F.3d. 486, 489 (7th Cir. 2000), (*Lewis v. Casey*,
24 518 U.S. 343, 351, 116, S.Ct. 2174 (1996), but also see e.g. (*Hydrick v. Hunter*, 466
25 F.3d 676 (9th Cir. 2006).)²

26
27
28 ² Plaintiff also assert that, as a result of preparing this lawsuit, on March 27, 2013, he received 8-pieces
of his previously withheld state and federal court mail but alleges that this act by defendant does not
undermine plaintiff's suit, (*Ellins v. Diaz*, ___ F.3d ___ (9th Cir. Mar. 22, 2013).)

G.

SECOND CAUSE OF ACTION

(The Defendant Patient's Rights Advocate and the Brady Rule Claims)

18. Plaintiff realleges, and incorporates herein by reference the allegations of the preceding paragraphs from 11 through 17, inclusive, as though they were fully set forth herein.

2. Fifth and Fourteenth Amendments Violations:

Argument (2)

19. Providing hospital Patient's Rights Advocacy, and investigative services to involuntarily civilly detained patients at Coalinga State Hospital, Defendant Wagoner is a Patient's Rights Advocate responsible for collecting evidence that could help a patient to prove his allegations of abuse, or misconduct by hospital mental health providers, and staff employees. This includes, but is not limited to, of making sure that exculpatory evidence is shared with the patient is fundamental to a fair investigation into his hospital grievances.

20. At the heart of his claim, Plaintiff alleges that defendant patient's rights advocate's policy is in fact a hospital sham, and that his hospital advocacy office staff deliberately conceals evidence of mental health staff abuses, and federal civil rights violations from the patients complainants that could potentially be helpful to their hospital administrative grievances.

21. Plaintiff also argues that in response to his complaint dated November 9, 2012, regarding his mail being withheld by Defendant Bigot, Defendant Wagoner's findings of misconduct on the part of Defendant Bigot had failed to include an interview and exculpatory statements from a hospital police officer named by plaintiff in his October 6, 2012, Citizen's Complaint that would have reflected on the truthfulness of his hospital grievance against Defendant Bigot and therefore, because of such suppression of a witness statements favorable to plaintiff was itself sufficient to amount to a denial of

1 his due process rights, see e.g. (*Pyle v. Kansas*, 317 U.S. 213, 215-16, 63 S.Ct. 177,
2 178, 87 L.Ed. 214).)

3 **H.**

4 **QUALIFIED IMMUNITY**

5 22. The law of the case in the Ninth Circuit is that the defendants are not
6 entitled to qualified immunity in involuntary detainee's 42 U.S.C. Section 1983 Federal
7 Civil Rights Actions challenging the conditions of his, or her confinement as an alleged
8 sexually violent predator, see (*Cerniglia v. County of Sacramento*, 566 F.Supp.2d 1034
9 (E.D. Cal. 2008), see also (*Jones v. Blanas*, 393 F.3d 918 (9th Cir. 2004).)

10 23. Moreover, Plaintiff's Section 1983, Federal Civil Rights Complaint also
11 assert that any dismissal in this action for his failure to state a claim pursuant to Federal
12 Rules of Civil Procedure, Rule 12(b)(6), would be a ruling on a question of law. This
13 Court must take as true ALL allegations of material fact as stated in the Complaint, and
14 construe them in a light most favorable to plaintiff, the nonmoving party, see (*Warshaw*
15 *v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). As the Supreme Court has stated "The
16 issue is not whether a plaintiff will ultimately prevail, but whether the claimant is entitled
17 to offer evidence in support of the claims. Indeed, it may appear on the face of the
18 pleadings that a recovery is very remote, and unlikely, but that is not the test," (*Scheuer*
19 *v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974), rather, "A
20 Complaint should not be dismissed for failure to state a claim unless it appears beyond
21 doubt that the plaintiff can prove no set of facts in support of his claim which would
22 entitle him to relief," (*Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80
23 (1957).)

24 **I.**

25 **SERVICE OF PROCESS**

26 **3. IN FORMA PAUPERIS ACTIONS.**

27 24. Under Federal Rules of Civil Procedure, Rule 4(c)(2), the District Court is
28 requested to direct the United States Marshal, or Clerk of the Court to effect service of

1 process on behalf of plaintiff proceeding in forma pauperis, see also, 28 U.S.C. Section
2 1654.

3 J.

4 PRAYER FOR RELIEF

5 Where, Plaintiff prays:

6 1. That the Court enter a judgment declaring that Plaintiff is entitled to an
7 order enjoining Defendants from any censorship, or delay of his outgoing-incoming mail
8 in any respect as to the following categories of addresses:

9 a. Any elected public official and his, or her staff members including, but not
10 limited to the United States District Courts, or Federal Appeals Court, the
11 Governor of the State of California, State and Federal Legislators, and
12 District Attorneys,

13 b. Any appointed public officials and his, or her staff members, including but
14 not limited to State and Federal police agencies, and the Administrators of
15 the State Department of Human Resources, or the state hospital,

16 c. Advocacy groups including, but not limited to the American Civil Liberties
17 Union, the California Innocence Projects, or Rights Advocacy Center,

18 d. Attorneys licensed to practice law in any state of these United States, and

19 e. Newspapers, magazines and other periodicals.

20 f. That the Court declare that the particulars, and contours the alleged
21 Constitutional Brady rights upon which the Plaintiff in this Action rely was
22 clearly established federal law in which under, (Brady v. Maryland, 373
23 U.S. 83, 10 L.Ed.2d, 215, 83 S.Ct. 1194 (1963), an inadvertent
24 nondisclosure of exculpatory evidence has the same impact on the
25 fairness of the proceedings as deliberate concealment, (Strickler v.
26 Greene, 527 U.S. 263, 144 L.Ed.2d 286, 119 S.Ct. 1936 (1999),

27 g. Requiring that establishment of an office of Patient's Rights Advocate at
28 the Coalinga State Hospital facility, an appropriate and effective means to

1 prevent defendant from future inadequate hospital patient rights
2 investigations or which would prohibit defendant from suppressing
3 exculpatory evidence favorable to patients grievances defense,

4 2. A preliminary and permanent injunction, enjoining and restraining
5 defendants, or Coalinga State Hospital mental health officials from retaliating against
6 plaintiff for filing such,

7 3. That the Court take judicial notice of exhibits "A" and "B," pursuant to
8 California Evidence Code Sections 453, and 459, see 28 U.S.C. Section 1367 for
9 allegations arising from state law,

10 4. That the District Court appoint counsel to assist Plaintiff in prosecuting this
11 action pursuant to, (Jones v. Blanas, 393 F.3d 918, 923 (9th Cir. 2004),

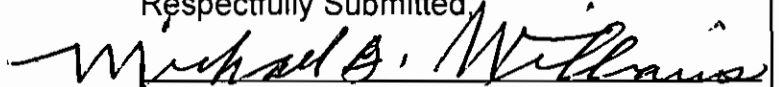
12 5. Reasonable cost of suit and attorney fees, as authorized by federal law.

13 6. A judgment awarding Plaintiff general, and compensatory damages in the
14 amounts to be determined or proven at trial, including but not limited to, punitive
15 damages for violations of his federal civil rights, and,

16 7. For any, and all such other relief as the District Court may deem
17 necessary, just, prudent and proper.

18 Dated: **APRIL 17, 2013**

19 Respectfully Submitted,

20 

21 Michael B. Williams
22 Plaintiff In Pro Se
23 28.U.S.C. Section 1654
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PROOF OF SERVICE BY MAIL

I declare that I am resident of Coalinga State Hospital, City of Coalinga, County of Fresno, State of California, I am over the age of eighteen years and I am a party to the within entitled action. My residence/business address is:

Michael B. Williams, 542-1
24511 West Jayne Avenue
Post Office Box 5003
Coalinga, CA 93210-5003

On the date noted below, I served the attached documents:


1. COMPLAINT FOR FIRST AMENDMENT AND DUE PROCESS VIOLATIONS PURSUANT TO THE FEDERAL CIVIL RIGHTS ACT OF 1871, UNDER 42 U.S.C. SECTION 1983.

by placing a true copy thereof in the United States mail, enclosed in an envelope, with postage fully prepaid, addressed as follows:

OFFICE OF THE CLERK UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA 2500 Tulare Street, Suite 1-505 Fresno, California 93721-2201	
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VERIFICATION

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed in Coalinga State Hospital, City of Coalinga, County of Fresno, State of California, on **APRIL 17, 2013.**



Michael B. Williams, Plaintiff In Pro Se
28.U.S.C. Section 1654