

1 **I. SCREENING REQUIREMENT**

2 The in forma pauperis statute provides, “Notwithstanding any filing fee, or any
3 portion thereof, that may have been paid, the court shall dismiss the case at any time if
4 the court determines that . . . the action or appeal . . . fails to state a claim upon which
5 relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 **II. PLEADING STANDARD**

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

13 To state a claim under § 1983, a plaintiff must allege two essential elements:
14 (1) that a right secured by the Constitution or laws of the United States was violated and
15 (2) that the alleged violation was committed by a person acting under the color of state
16 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d
17 1243, 1245 (9th Cir. 1987).

18 A complaint must contain “a short and plain statement of the claim showing that
19 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
20 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
21 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
22 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
23 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief
24 that is plausible on its face.” Id. Facial plausibility demands more than the mere
25 possibility that a defendant committed misconduct and, while factual allegations are
26 accepted as true, legal conclusions are not. Id. at 677-78.

1 **III. PLAINTIFF’S ALLEGATIONS**

2 Plaintiff is detained at Coalinga State Hospital (“CSH”). He names as Defendants:
3 (1) Audrey King, Executive Director of CSH, and (2) CSH.

4 Plaintiff’s allegations may be summarized essentially as follows.

5 On December 6, 2000, the San Francisco District Attorney filed a petition
6 pursuant to California’s Sexually Violent Predator Act (“SVPA”) to have Plaintiff civilly
7 detained for an involuntary two year hospital term.¹ Plaintiff has been detained by the
8 California Department of State Hospitals since January 3, 2003.

9 On April 26, 2013, Plaintiff filed in state court a motion to dismiss the prior
10 commitment petition on speedy trial grounds. The motion was denied. Plaintiff still has
11 not had a commitment trial, and is being held at CSH based solely on the state court’s
12 determination of probable cause. It is unclear whether Plaintiff alleges that he never had
13 a civil commitment trial, or only whether he did not have a subsequent trial after his initial
14 two-year commitment term expired.

15 Plaintiff seeks a declaration that the SVPA is unconstitutional as applied because
16 he has been awaiting a civil commitment trial for twelve years. He further seeks a
17 declaration that his continued detention is unconstitutional.

18 **IV. ANALYSIS**

19 The exclusive method for challenging the fact or duration of Plaintiff’s confinement
20 is by filing a petition for a writ of habeas corpus. Wilkinson v. Dotson, 544 U.S. 74, 78
21 (2005). See 28 U.S.C. § 2254(a). Such claims may not be brought in a section 1983
22 action. Nor may Plaintiff seek to invalidate the fact or duration of his confinement
23 indirectly through a judicial determination that necessarily implies the unlawfulness of the
24 State’s custody. Wilkinson, 544 U.S. at 81. A section 1983 action is barred, no matter the
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26 ¹ Prior to the SVPA’s amendment in 2006, a sexually violent predator was committed to the custody of the
27 Department of Mental Health for a two year term, and was not kept in custody in excess of two years
28 unless a new petition to extend the commitment was filed. Bourquez v. Superior Court, 68 Cal. Rptr. 3d
142, 144 (Cal. App. 2007). The law since has been changed to provide for indefinite commitment of
sexually violent predators, with periodic review. Id.; Cal. Welf. & Inst. Code § 6604 (2006).

1 relief sought, if success in that action would necessarily demonstrate the invalidity of
2 confinement or its duration. Id. at 81-82; Heck v. Humphrey, 512 U.S. 477, 489 (1994)
3 (unless and until favorable termination of the conviction or sentence, no cause of action
4 under section 1983 exists); Huftile v. Miccio-Fonseca, 410 F.3d 1136, 1140 (9th Cir.
5 2005) (applying Heck to SVPA detainees with access to habeas relief).

6 Plaintiff's request for a declaratory judgment seeks to invalidate aspects of the
7 SVPA or its implementation that have resulted in his continued detention beyond the
8 expiration of his initial SVPA commitment order. Thus, his claim directly challenges his
9 continued custody, and may not be brought in a section 1983 action. Wilkinson, 544 U.S.
10 at 78. Until Plaintiff's civil detention has been "reversed on direct appeal, expunged by
11 executive order, declared invalid by a state tribunal authorized to make such
12 determination, or called into question by a federal court's issuance of a writ of habeas
13 corpus," Plaintiff is barred from bringing his claims under section 1983. Heck, 512 U.S. at
14 487.

15 Plaintiff previously was advised of this deficiency and provided an opportunity to
16 amend his complaint to explain how his claims are cognizable in light of the above
17 restrictions. (ECF No. 11.) He has not so explained. Further leave to amend would be
18 futile and will be denied. Because Plaintiff's motion for declaratory judgment and court
19 order (ECF No. 12) is substantively identical to the first amended complaint (ECF No.
20 13), it will be denied on the same ground.

21 **V. CONCLUSION AND ORDER**

22 Plaintiff's claims challenge the validity of his confinement and may only be
23 brought in a petition for a writ of habeas corpus. Thus, Plaintiff has failed to state any
24 claims that are cognizable under section 1983. This deficiency is not capable of being
25 cured through amendment. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012).
26 Plaintiff will not be given further leave to amend.

27 Based on the foregoing, it is HEREBY ORDERED that:
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1. The action is DISMISSED WITH PREJUDICE for failure to state a claim,
2. Plaintiff's motion for declaratory judgment and court order (ECF No. 12) is DENIED, and
3. The Clerk of court shall terminate any and all pending motions and CLOSE this case.

IT IS SO ORDERED.

Dated: January 27, 2015

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE