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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL B. WILLIAMS,  
Plaintiff,  
v.  
VICKIE MADRID,  
Defendant.

Case No. 1:13-cv-02104-MJS (PC)

**ORDER DISMISSING ACTION WITHOUT  
PREJUDICE**

**(ECF No. 8)**

**CLERK TO TERMINATE ALL PENDING  
MOTIONS, CLOSE CASE AND ENTER  
JUDGMENT**

Plaintiff proceeds pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. The Complaint was dismissed for failure to state a claim. The First Amended Complaint is before the Court for screening.

**I. SCREENING REQUIREMENT**

The Court must dismiss an in forma pauperis action at any time if the Court determines that the allegation of poverty is untrue, the action is frivolous or malicious, the action fails to state a claim upon which relief may be granted, or seeks monetary relief against a defendant immune from such relief. See 28 U.S.C. § 1915(e).

**II. PLEADING STANDARD**

Section 1983 “provides a cause of action for the deprivation of any rights,

1 privileges, or immunities secured by the Constitution and laws of the United States.”  
2 *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 508 (1990), quoting 42 U.S.C. § 1983.  
3 Section 1983 is not itself a source of substantive rights, but merely provides a method  
4 for vindicating federal rights conferred elsewhere. *Graham v. Connor*, 490 U.S. 386,  
5 393-94 (1989).

6 To state a claim under § 1983, a plaintiff must allege two essential elements: (1)  
7 that a right secured by the Constitution or laws of the United States was violated and (2)  
8 that the alleged violation was committed by a person acting under the color of state law.  
9 See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243,  
10 1245 (9th Cir. 1987).

11 A complaint must contain “a short and plain statement of the claim showing that  
12 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
13 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
14 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S.  
15 662, 678 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
16 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim that is  
17 plausible on its face.” *Id.* Facial plausibility demands more than the mere possibility that  
18 a defendant committed misconduct and, while factual allegations are accepted as true,  
19 legal conclusions are not. *Id.* at 667-68.

20 Pro se pleadings must be liberally construed. See *Balistreri v. Pacifica Police*  
21 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

### 22 **III. PLAINTIFF'S ALLEGATIONS**

23 Plaintiff is an uncommitted civil detainee housed at Coalinga State Hospital  
24 (“CSH”). Since the completion of his prison sentence in or about 2000, he has been  
25 held over for civil commitment trial pursuant to California’s Sexually Violent Predator Act  
26 (“SVPA”).<sup>1</sup>

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28 <sup>1</sup> The Court takes notice of the SVPA. Cal. Welf. & Inst. Code § 6600 et seq.

1 Plaintiff claims Defendant Madrid, a CSH staff social worker, retaliated against  
2 him for refusing to participate in group treatment sessions known as the “Better Lives  
3 Treatment Program (“Program”). The Program required he make “incriminating  
4 admissions” that would be used to prevent his release from SVPA confinement.

5 He claims Madrid retaliated by preparing an unfavorable April 2013 Annual  
6 Psychological Examination Report (“Report”, Ex. A to First Am. Compl.) that contains  
7 factual errors.<sup>2</sup> The Report affects the duration of his SVPA commitment because it  
8 would be viewed unfavorably at civil commitment trial.

9 He claims Madrid’s requiring him to participate in the Program is contrary to the  
10 SVPA and violated the Establishment Clause.

11 He seeks monetary damages.

#### 12 **IV. DISCUSSION**

##### 13 **A. First Amendment Retaliation**

14 A civil detainee’s First Amendment claim may be analyzed under prisoner rights  
15 case law. *Rivera v. Rogers*, 224 Fed.Appx. 148, 150 (3d Cir. 2007).

16 Plaintiff alleges that Defendant Madrid retaliated against him for seeking to  
17 exercise his right not to participate in group therapy that required Plaintiff to make  
18 incriminating admissions. In order to demonstrate a First Amendment violation, a  
19 plaintiff must provide evidence showing that “by his actions [the defendant] deterred or  
20 chilled [the plaintiff’s] [First Amendment conduct] and such deterrence was a substantial  
21 or motivating factor in [the defendant’s] conduct.” *Mendocino Env’l Ctr. v. Mendocino*  
22 *County*, 192 F.3d 1289, 1300 (9th Cir. 1999).

23 The right that Plaintiff asserts is a right not to participate in a Program which  
24 requires compelled self-incrimination.

##### 25 1. Protected Activity

26 Plaintiff does not explain how or why the First Amendment applies to his refusal

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28 <sup>2</sup> The Report is not susceptible of judicial notice. Fed. R. Evi. 201. Plaintiff’s request for judicial notice of the Report is denied.

1 to participate in the Program other than by pointing to language in the SVPA, Cal. Welf.  
2 & Inst. Code § 6606, that a post-commitment detainee may in certain circumstances  
3 refuse treatment. However, Plaintiff is a pre-commitment detainee.

4 Even if Plaintiff had a state right to refuse Program participation, he does not  
5 allege facts that would support a finding he was entitled to First Amendment protection.  
6 He makes no allegation of being forced to act or not act in a way protected by the First  
7 Amendment. See *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1188 (9th Cir. 1995),  
8 citing *Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-18, (1984) (the First Amendment  
9 protects the right to associate for the purpose of engaging in those expressive activities  
10 otherwise protected by the Constitution).

11 He also claims Madrid forced his participation in the Program in violation of the  
12 First Amendment's Establishment Clause. The Establishment Clause proscribes any  
13 law "respecting an establishment of religion." See *Larson v. Valente*, 456 U.S. 228, 244  
14 (1982). Plaintiff's allegations are devoid of reference to religion or religious activity.  
15 Furthermore, the claim he was forced to participate in the Program contradicts the claim  
16 he was punished (retaliated against) for not participating. Plaintiff does not demonstrate  
17 conduct protected by the Establishment Clause.

## 18 2. Retaliatory Motivation

19 A plaintiff alleging retaliation for the exercise of First Amendment rights must  
20 show that the protected conduct was a "substantial" or "motivating" factor in the  
21 defendants' actions. *Sorrano's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314 (9th Cir.  
22 1989). Plaintiff cannot do so here because there was no First Amendment conduct.

## 23 3. Adverse Action

24 Plaintiff does not identify any material factual or other error in in the Report. See  
25 *Reilly v. Superior Court*, 57 Cal.4th 641, 652 (2013). The allegations do not demonstrate  
26 conduct that deters or chills First Amendment rights.

27 In sum, Plaintiff fails to state a claim for First Amendment retaliation.

1           **B.     Self-Incrimination**

2           Plaintiff claims his refusal to participate in the Program is an assertion of a right  
3 against making incriminating admissions. The Fifth Amendment to the U.S. Constitution  
4 provides that “No person . . . shall be compelled in any criminal case to be a witness  
5 against himself . . . .” U.S. Const. amend. V.

6           However, the Fifth Amendment right against self-incrimination does not extend to  
7 civil mental examination, see *Young v. Murphy*, 90 F.3d 1225, 1236 (7th Cir. 1996),  
8 citing *Mathis v. United States*, 391 U.S. 1,5 (1968), or to sexually dangerous person  
9 commitment proceedings. See e.g., *Allen v. Illinois*, 478 U.S. 364, 373-74 (1986),  
10 accord, *Renchenski v. Williams*, 622 F.3d 315, 333 (3d Cir. 2010).

11          The self-incrimination claim fails.

12           **C.     Abstention from Ongoing SVPA Proceedings**

13          It appears that any claim as to the propriety of the Report is so intimately related  
14 to the SVPA civil commitment proceeding that success thereon would imply the  
15 invalidity of the pending SVPA proceedings and possible eventual commitment. The  
16 Court agrees with the rationale in *Wallace v. Kato*, 549 U.S. 384, 393 (2007) and shall  
17 abstain from interfering in the ongoing SVPA proceeding.

18          Plaintiff was advised in the previous screening order that if he desires to  
19 challenge the lawfulness of his current custody, the exclusive method to do so in federal  
20 court is by filing a petition for writ of habeas corpus. See *Preiser v. Rodriguez*, 411 U.S.  
21 475, 500 (1973).

22           **V.     CONCLUSIONS AND ORDER**

23          If Plaintiff wants to challenge the lawfulness of his current custody, the exclusive  
24 method by which he may do so in federal court is by filing a petition for writ of habeas  
25 corpus. The First Amended Complaint does not state a claim for relief under § 1983.  
26 Plaintiff was advised in the prior screening order of claim deficiencies and the required  
27 corrections, and despite having been afforded the opportunity to correct them, has failed  
28 to do so. For the reasons stated, and given the current state of his SVPA proceedings,

1 leave to amend at this time would be futile.

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. The action be dismissed without prejudice for failure to state a claim,  
4 consistent with the rationale in *Wallace*, and
- 5 2. The Clerk of the Court shall terminate all pending motions, close the case  
6 and enter judgment.

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8 IT IS SO ORDERED.

9 Dated: April 21, 2014

*/s/ Michael J. Seng*  
10 UNITED STATES MAGISTRATE JUDGE

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