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

RUBEN HERRERA,  
  
                    Plaintiff,  
  
          v.  
  
PAM AHLIN, et al.,  
  
                    Defendants.

Case No. 1:14-cv-00164-LJO-BAM-PC  
  
FINDINGS AND RECOMMENDATIONS  
THAT DEFENDANTS AHLIN, KING,  
MAYNARD AND RANDHAWA BE  
DISMISSED FROM THIS ACTION FOR  
FAILURE TO STATE A COGNIZABLE  
CLAIM AND THAT THIS ACTION  
PROCEED ON PLAINTIFF’S CLAIM OF  
EXCESSIVE FORCE AGAINST DOE  
DEFENDANTS  
  
(ECF NO. 16)  
  
OBJECTIONS DUE IN FOURTEEN DAYS

Plaintiff is a civil detainee proceeding pro se and in forma pauperis pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. Pending before the Court is Plaintiff’s July 20, 2015, second amended complaint.

**I. Procedural History**

Plaintiff, a civil detainee in the custody of the Department of State Hospitals at Coalinga State Hospital (CSH), filed this action on February 6, 2014. Plaintiff’s claim stems from a use of force incident at CSH on September 18, 2011. Plaintiff alleges that on that date, he was housed on the Secured Services Unit (SSU) at CSH. Plaintiff, while in the SSU courtyard, climbed a basketball pole and refused orders to climb down. Plaintiff refused to come on the ground that

1 he was not given an opportunity to talk to the then Director, Defendant Pam Ahlin. Four inch  
2 thick mattresses were placed around the base of the pole in order to protect Plaintiff if he fell.  
3 Plaintiff refused commands to come down from the pole. Plaintiff alleges that unidentified  
4 officers fired several shots from a baton launcher in order to get Plaintiff climb down. Plaintiff  
5 used his hands to cover his eyes and fell over backwards, falling head first and injuring his neck  
6 and head.

7 On April 16, 2015, an order was entered, dismissing the complaint and granting Plaintiff  
8 leave to file an amended complaint. (ECF No. 9.) On May 14, 2015, Plaintiff filed a first  
9 amended complaint. (ECF No. 11.) Plaintiff filed a motion for extension of time to further  
10 amend the complaint to identify Doe defendants. On May 20, 2015, an order was entered,  
11 granting Plaintiff's Plaintiff motion pursuant to Federal Rule of Civil Procedure 15(a), and  
12 granting Plaintiff leave to file a second amended complaint that identified the Doe Defendants.  
13 (ECF No. 13.) On July 20, 2015, Plaintiff filed the second amended complaint that is now  
14 before the Court. (ECF No. 16.)

## 15 **II. Allegations**

16 In his second amended complaint, Plaintiff re-states the allegations of the original  
17 complaint. Plaintiff names as Defendants former CSH Executive Director Pam Ahlin, current  
18 CSH Executive Director A. King; former CSH Medical Director G. Maynard; CSH Psychologist  
19 R. Randhawa, Ph.D.; Department of Police Services (DPS) Officers John Does.<sup>1</sup> Plaintiff re-  
20 states the allegations of the original complaint that he climbed a basketball pole in protest on  
21 September 18, 2011, and Defendant John Doe DPS officers used excessive force to get him to  
22 climb down, resulting in his fall and injury.

## 23 **II. Analysis**

### 24 **A. Excessive Force**

25 The Eighth Amendment protects prisoner from inhuman methods of punishment and from

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27 <sup>1</sup> Plaintiff filed this action against Defendants in their individual and official capacities. However, "[t]he Eleventh  
28 Amendment bars suits for money damages in federal court against a state, its agencies, and state officials in their  
official capacities." Aholelei v. Dept. of Public Safety, 488 F.3d 1144, 1147 (9th Cir. 2007)(citations omitted).

1 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
2 2006). Although prison conditions may be restrictive and harsh, prison officials must provide  
3 prisoners with food, clothing, shelter, sanitation, medical care, and personal safety. Farmer v.  
4 Brennan, 511 U.S. 825, 832-33 (1994)(quotations omitted). Prison officials are liable under the  
5 Eighth Amendment only if they demonstrate deliberate indifference to conditions posing a  
6 substantial risk of serious harm to an inmate; and it is well settled that deliberate indifference  
7 occurs when an official acted or failed to act despite his knowledge of a substantial risk of  
8 serious harm. Farmer, 511 U.S. at 834, 841; Clem v. Lomeli, 566 F.3d 1177 1181 (9th Cir.  
9 2009); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005).

10 As a civil detainee, Plaintiff is entitled to protection under the Fourteenth Amendment, rather  
11 than the Eighth Amendment. Fisher v. Bryant, 2:10-cv-02311-KJM-DAD, 2012 WL 327698  
12 (E.D. Cal. Aug. 9, 2012)(Applying the Fourteenth Amendment due process standard to a claim  
13 of excessive force brought by a civil detainee, rather than the standard set forth under the Eighth  
14 Amendment). The Ninth Circuit has recognized that the aforementioned Eighth Amendment  
15 rights guaranteed for prisoners “set a floor for those that must be afforded to” civil detainees.  
16 Hydrick v. Hunter, 500 F.3d 978, 989 (9th Cir. 2007)(summarily reversed on other grounds by  
17 Hunter v. Hydrick, 556 U.S. 1256 (2009). The objectively reasonable standard set forth by the  
18 Fourteenth Amendment, rather than the “malicious and sadistic” standard of the Eighth  
19 Amendment, applies to Plaintiff’s claim. Id.

20 Here, a state employee firing non-lethal rounds to remove Plaintiff from a basketball pole  
21 without any provocation, plausibly identifies an objectively unreasonable use of force. As such,  
22 Plaintiff states an excessive force claim against the Doe DPS officer or officers that fired the  
23 non-lethal rounds.

24 As Plaintiff was advised in the April 16, 2015, screening order, the Court cannot order  
25 service upon unidentified individuals. Although the use of Doe defendants is acceptable to  
26 withstand dismissal of the complaint at the screening stage, those person or persons cannot be  
27 served with process in this action until they are identified by their names. The burden is on  
28 Plaintiff to discover the identity of the defendant(s).

1        **B. Supervisory Liability**

2            As to Defendants Ahlin, King and Maynard, Plaintiff is advised that government officials  
3 may not be held liable for the actions of their subordinates under a theory of respondeat superior.  
4 Ashcroft v. Iqbal, 556 U.S. 662, 673 (2009). Since a government official cannot be held liable  
5 under a theory of vicarious liability for section 1983 actions, Plaintiff must plead that the official  
6 has violated the Constitution through his own individual actions. Id. at 673. In other words, to  
7 state claim for relief under section 1983, Plaintiff must link each named defendant with some  
8 affirmative act or omission that demonstrates a violation of Plaintiff’s federal rights. Plaintiff  
9 has not alleged any facts suggesting personal participation by these Defendants in the use of  
10 excessive force. They should therefore be dismissed for Plaintiff’s failure to state a claim against  
11 them.

12        **C. Dr. Randhawa**

13            Plaintiff does not charge Defendant Randhawa with any conduct that indicates a deprivation  
14 of a protected interest of Plaintiff’s. Plaintiff’s sole allegation against Dr. Randhawa is that he is  
15 responsible for Plaintiff’s placement in the SSU.

16            Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or  
17 other federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d  
18 1087, 1092 (9th Cir. 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.  
19 2006); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). “Section 1983 is not itself a source  
20 of substantive rights, but merely provides a method for vindicating federal rights elsewhere  
21 conferred.” Crowley v. Nevada ex rel. Nevada Sec’y of State, 678 F.3d 730, 734 (9th Cir.  
22 2012)(citing Graham v. Connor, 490 U.S. 386, 393-94 (1989))(internal quotation marks  
23 omitted). To state a claim, Plaintiff must allege facts demonstrating the existence of a link, or  
24 causal connection, between each defendant’s actions or omissions and a violation of his federal  
25 rights. Lemire v. California Dep’t of Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013);  
26 Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

27            As a civil detainee, Plaintiff is entitled to treatment more considerate than that afforded  
28 pretrial detainees or convicted criminals. Jones v. Blanas, 393 F.3d 918, 931-32 (9th Cir. 2004).

1 Plaintiff's right to constitutionally adequate conditions of confinement is protected by the  
2 substantive component of the Due Process Clause. Youngberg v. Romero, 457 U.S. 307, 315  
3 (1982). A determination whether Plaintiff's rights were violated requires "balancing of his  
4 liberty interests against the relevant state interests." Youngberg, 457 U.S. at 321. The  
5 Constitution requires only that courts ensure that professional judgment was exercised.  
6 Youngberg, 457 U.S. at 321-22. A "decision, if made by a professional, is presumptively valid;  
7 liability may be imposed only when the decision by the professional is such a substantial  
8 departure from accepted professional judgment, practice, or standards as to demonstrate that the  
9 person responsible actually did not base the decision on such a judgment." Id. at 322-23. The  
10 professional judgment standard is an objective standard and it equates "to that required in  
11 ordinary tort cases for a finding of conscious indifference amounting to gross negligence."  
12 Ammons v. Washington Dep't of Soc. & Health Servs., 648 F.3d 1020, 1029 (9th Cir. 2011),  
13 cert. denied, 132 S.Ct. 2379 (2012)(citations and internal quotation marks omitted).

14 Here, Plaintiff's only allegation as to Dr. Randhawa is that he is responsible for  
15 Plaintiff's placement in the SSU. There are no allegations that Dr. Randhawa made any  
16 decisions or engaged in any conduct that was a departure from the professional judgment  
17 standard. Dr. Randhawa should therefore be dismissed for Plaintiff's failure to state a claim  
18 against him.

### 19 **III. Conclusion.**

20 Plaintiff was previously notified of the applicable legal standards and the deficiencies in  
21 his pleading, and despite guidance from the Court, Plaintiff's second amended complaint is  
22 largely identical to the original complaint. Based upon the allegations in Plaintiff's original  
23 complaint, first amended complaint, and second amended complaint, the Court is persuaded that  
24 Plaintiff is unable to allege any additional facts that would support a claim for relief against  
25 Defendants Ahlin, King, Maynard, and Randhawa, and further amendment would be futile. See  
26 Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district court may deny leave to  
27 amend when amendment would be futile.") Based on the nature of the deficiencies at issue, the  
28 Court finds that further leave to amend is not warranted. Lopez v. Smith, 203 F.3d 1122, 1130

1 (9th. Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9<sup>th</sup> Cir. 1987).

2 Accordingly, IT IS HEREBY RECOMMENDED that:

- 3 1. This action proceed on the July 20, 2015, second amended complaint against the Doe  
4 DSP officers; and  
5 2. Defendants Ahlin, King, Maynard and Randhawa be dismissed from this action for  
6 Plaintiff's failure to state a claim against them.

7 These findings and recommendations will be submitted to the United States District  
8 Judge assigned to the case, pursuant to the provision of Title 28 U.S.C. §636 (b)(1)(B). Within  
9 **fourteen (14)** days after being served with these Finding and Recommendations, the parties may  
10 file written objections with the Court. The document should be captioned "Objections to  
11 Findings and Recommendations." The parties are advised that failure to file objections within  
12 the specified time may result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.2d  
13 F.3d 834, 838-39 (9th Cir. 2014)(citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9<sup>th</sup> Cir. 1991)).

14  
15 IT IS SO ORDERED.

16 Dated: May 6, 2016

17 /s/ Barbara A. McAuliffe  
18 UNITED STATES MAGISTRATE JUDGE  
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