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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARCHIE CRANFORD,

Plaintiff,

vs.

KATHLEEN O'BRIAN, et al.,

Defendants.

1:14-cv-00221-GSA-PC

ORDER DISMISSING SECOND AMENDED
COMPLAINT FOR FAILURE TO STATE A
CLAIM, WITH LEAVE TO AMEND
(Doc. 17.)

THIRTY DAY DEADLINE TO FILE THIRD
AMENDED COMPLAINT

I. BACKGROUND

Archie Cranford ("Plaintiff") is a civil detainee proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February 20, 2014. (Doc. 1.) On February 27, 2014, Plaintiff consented to Magistrate Judge jurisdiction in this action pursuant to 28 U.S.C. § 636(c), and no other parties have made an appearance. (Doc. 5.) Therefore, pursuant to Appendix A(k)(4) of the Local Rules of the Eastern District of California, the undersigned shall conduct any and all proceedings in the case until such time as reassignment to a District Judge is required. Local Rule Appendix A(k)(3).

On February 28, 2014, Plaintiff filed the First Amended Complaint. (Doc. 7.) The court screened the First Amended Complaint and issued an order on June 25, 2014, requiring Plaintiff to either file a Second Amended Complaint or notify the court that he is willing to proceed on the excessive force claim found cognizable by the court in the First Amended Complaint. (Doc. 16.) On July 3, 2014, Plaintiff filed the Second Amended Complaint, which is now before the court for screening. (Doc. 17.)

1 **II. SCREENING REQUIREMENT**

2 The in forma pauperis statute provides that “the court shall dismiss the case at any time
3 if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief
4 may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii). “Rule 8(a)”s simplified pleading standard
5 applies to all civil actions, with limited exceptions,” none of which applies to section 1983
6 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). A
7 complaint must contain “a short and plain statement of the claim showing that the pleader is
8 entitled to relief” Fed. R. Civ. P. 8(a)(2). “Such a statement must simply give the
9 defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.”
10 Swierkiewicz, 534 U.S. at 512. Detailed factual allegations are not required, but “[t]hreadbare
11 recitals of the elements of a cause of action, supported by mere conclusory statements, do not
12 suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell Atlantic
13 Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts “are not required to
14 indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir.
15 2009) (internal quotation marks and citation omitted). While factual allegations are accepted as
16 true, legal conclusions are not. Iqbal, 556 U.S. at 678. However, “the liberal pleading standard
17 . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330 n.9
18 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
19 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251,
20 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

21 **III. SUMMARY OF SECOND AMENDED COMPLAINT**

22 Plaintiff is presently housed at Coalinga State Hospital in Coalinga, California, in the
23 custody of the California Department of Mental Health, where the events at issue in the Second
24 Amended Complaint allegedly occurred. Plaintiff names as defendants Kathleen O’Brian and
25 Earek James (“Defendants”).

26 Plaintiff’s allegations are largely vague, rambling, and conclusory. Plaintiff alleges that
27 defendant O’Brian insulted him and gave his meal to another patient, and that defendant James
28 subjected him to excessive force. Although the allegations are not clearly set forth, Plaintiff

1 appears to allege that defendant O’Brian’s conduct caused Plaintiff to fear a possible altercation
2 with another inmate in which Plaintiff would be injured. Plaintiff also appears to allege that
3 defendant James used force against him when placing him in isolation, causing harm to his
4 upper body. Plaintiff alleges, in part (*sic*):

5 “[P]laintiff claims that Defendant kathleen o, brin insulted
6 plaintiff and gave his meal too an nuther patient and patient
7 claims that Defendant Mr. james Erick subjected him
8 [PLAINTIFF] to exessive force. The court claim that the above
9 stated actions none of which applies to section 1983 action[note]
10 with limited exceptions such as this exception if a defeandant
11 uses multible insults to invoke feer [Teareast Freer] of which can
12 amount to words that can and did lead to exstreem feer and the
13 same meathead was applied in the giving plaintiffs food away to
14 mr. good a black patient this was done in hopes of getting an
15 physical alltercashion of which plaintiff would have no chance
16 what so ever of perviailing in a long with outhr members of his
17 race the reasion of bouth atempts was to see plaintiff as well
18 outhrs searousley injured or worse the risk to a particular
19 patient officials or employees will obviously be held liable for an
20 assault if they actively permit or encourage it as the defeandant
21 attempted she will also be found deliberately indifferent if she
22 stand by and do nothing about an assault that they witness or have
23 been notified of to take action in eather stoping or perventing that
24 she worked through getting started is not very feassable why give
25 plaintiffs food away or insault plaintiff . . .”

26 (Second Amended Complaint (2ACP), Doc. 17 at 1:15-25.)

27 **IV. PLAINTIFF’S CLAIMS**

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

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

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

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1 **Rule 8(a)**

2 The court finds the allegations in Plaintiff's complaint to be vague and conclusory.
3 Swierkeiwicz, 534 U.S. at 512. Under federal notice pleading, a complaint is required to
4 contain "a short and plain statement of the claim showing that the pleader is entitled to relief . .
5 . ." Fed. R. Civ. P. 8(a)(2). "Such a statement must simply give defendant fair notice of what
6 the plaintiff's claim is and the grounds upon which it rests." Swierkewicz, 534 U.S. at 512.
7 Although the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice
8 and state the elements of the claim plainly and succinctly. Jones v. Community Redev.
9 Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least some degree of
10 particularity overt acts which defendants engaged in that support plaintiff's claim. Id. As
11 stated above, "While a plaintiff's allegations are taken as true, courts "are not required to
12 indulge unwarranted inferences." Doe I, 572 F.3d at 681. Under section 1983, Plaintiff must
13 demonstrate that each defendant *personally* participated in the deprivation of his rights. Jones
14 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (emphasis added). This requires the
15 presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 556 U.S.
16 at 678; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of
17 misconduct falls short of meeting this plausibility standard. Id.

18 Plaintiff's Second Amended Complaint does not contain a short and plain statement as
19 required by Fed. R. Civ. P. 8(a)(2). Plaintiff has not alleged facts showing that any of the
20 Defendants personally acted to violate Plaintiff's Constitutional rights. Because Plaintiff has
21 failed to comply with the requirements of Fed. R. Civ. P. 8(a)(2), the Second Amended
22 Complaint must be dismissed. Plaintiff shall be granted leave to amend.

23 In the following paragraphs, the court sets forth legal standards that appear to apply to
24 Plaintiff's claims. Plaintiff should review the standards before preparing the Third Amended
25 Complaint, and only allege claims upon which it appears he can succeed.

26 **Excessive Force – Fourth and Fourteenth Amendments**

27 It is the Due Process Clause of the Fourteenth Amendment that protects civil detainees
28 from the use of excessive force which amounts to punishment, Gibson v. County of Washoe,

1 Nev., 290 F.3d 1175, 1197 (9th Cir. 2002) (citing Graham v. Connor, 490 U.S. 386, 395 n.10
2 (1989)), and the Fourth Amendment sets the applicable constitutional limitations for
3 considering such claims, Lolli v. County of Orange, 351 F.3d 410, 415 (9th Cir. 2003) (citing
4 Gibson, 290 F.3d at 1198) (quotation marks omitted).

5 In resolving claims of excessive force brought by civil detainees, the Fourth
6 Amendment's objective reasonableness standard applies. Lolli, 351 F.3d at 415. The inquiry is
7 whether Defendants' actions were objectively reasonable in light of the facts and circumstances
8 confronting them, without regard to their underlying intent or motivation. Id. (citing Graham,
9 490 U.S. at 397) (quotation marks omitted). The nature and quality of the intrusion on
10 Plaintiff's Fourth Amendment interests must be balanced against the countervailing
11 governmental interests at stake. Id. (citing Graham, 490 U.S. at 397) (quotation marks
12 omitted). Factors may include the severity of the incident giving rise to the use of force,
13 whether Plaintiff posed an immediate threat to the safety of Defendants or others, and whether
14 Plaintiff was actively attempting to avoid being subdued or brought under control. See Gibson,
15 290 F.3d at 1198 (citation omitted).

16 **Verbal Harassment**

17 Mere verbal harassment or abuse alone is not sufficient to state a constitutional
18 deprivation under 42 U.S.C. § 1983. Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir.
19 1987); accord Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996).

20 **Conditions Of Confinement – Civil Detainee**

21 A civil detainee retains greater liberty protections than individuals detained under
22 criminal process and is “entitled to more considerate treatment and conditions of confinement
23 than criminals whose conditions of confinement are designed to punish.” Jones v. Blanas, 393
24 F.3d 918, 931–32 (9th Cir.2004) (quoting Youngberg v. Romeo, 457 U.S. 307, 322, 102 S.Ct.
25 2452, 73 L.Ed.2d 28 (1982)). Treatment is presumptively punitive when a civil “detainee is
26 confined in conditions identical to, similar to, or more restrictive” than his criminal
27 counterparts. Id. at 933.

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1 Plaintiff's right to constitutionally adequate conditions of confinement is protected by
2 the substantive component of the Due Process Clause. Youngberg, 457 U.S. at 315. A
3 determination whether Plaintiff's rights were violated requires "balancing his liberty interests
4 against the relevant state interests"; the Constitution, however, is not concerned with *de*
5 *minimis* restrictions on a patient's liberties. Id. at 320–21. Additionally, there must be a
6 reasonable relationship between "the conditions and duration of confinement" and the purpose
7 for which the civilly confined person is committed. Seling v. Young, 531 U.S. 250, 265, 121
8 S.Ct. 727, 148 L.Ed.2d 734 (2001).

9 **V. CONCLUSION AND ORDER**

10 Based on the foregoing, the Court finds that Plaintiff's Second Amended Complaint
11 fails to state any claims upon which relief may be granted under § 1983 against any of the
12 Defendants. Plaintiff has now filed three complaints, with ample guidance by the court, and the
13 operative complaint on file fails to state any claims. At this juncture, the court usually moves
14 to dismiss the case in its entirety for failure to state a claim. However, in light of the fact that
15 Plaintiff was able to state a cognizable claim for excessive force in the First Amended
16 Complaint, the court shall allow Plaintiff one final opportunity to amend.

17 The Third Amended Complaint should be brief, Fed. R. Civ. P. 8(a), but must state
18 what each named defendant did that led to the deprivation of Plaintiff's constitutional or other
19 federal rights, Iqbal, 556 U.S. at 678; Jones, 297 F.3d at 934. Plaintiff must set forth
20 "sufficient factual matter . . . to 'state a claim that is plausible on its face.'" Id. at 678 (quoting
21 Twombly, 550 U.S. at 555). There is no *respondeat superior* liability, and each defendant is
22 only liable for his or her own misconduct. Iqbal, 556 U.S. at 677. Plaintiff must demonstrate
23 that each defendant *personally* participated in the deprivation of his rights. Jones, 297 F.3d at
24 934 (emphasis added). Plaintiff should state clearly, in his own words, what happened and how
25 each defendant's actions violated the particular right described by Plaintiff.

26 Plaintiff should note that although he has been given the opportunity to amend, it is not
27 for the purposes of adding allegations of events occurring or claims arising after February 20,
28 2014. Plaintiff may not change the nature of this suit by adding new, unrelated claims in his

1 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot”
2 complaints).

3 Plaintiff is reminded that an amended complaint supercedes the original complaint,
4 Lacey v. Maricopa County, 693 F. 3d 896, 907 n.1 (9th Cir. Aug. 29, 2012) (en banc), and it
5 must be complete in itself without reference to the prior or superceded pleading. Local Rule
6 220. Once an amended complaint is filed, the original complaint no longer serves any function
7 in the case. Therefore, in an amended complaint, as in an original complaint, each claim and
8 the involvement of each defendant must be sufficiently alleged. The amended complaint
9 should be clearly and boldly titled “Third Amended Complaint,” refer to the appropriate case
10 number, and be an original signed under penalty of perjury.

11 Based on the foregoing, it is HEREBY ORDERED that:

- 12 1. Plaintiff’s Second Amended Complaint, filed on July 3, 2014, is DISMISSED
13 for failure to state a claim under § 1983, with leave to amend;
- 14 2. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 15 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
16 a Third Amended Complaint, curing the deficiencies identified in this order;
- 17 4. Plaintiff shall caption the amended complaint “Third Amended Complaint” and
18 refer to the case number 1:14-cv-00221-GSA-PC; and
- 19 5. If Plaintiff fails to comply with this order, this action will be dismissed, with
20 prejudice, for failure to state a claim.

21
22 IT IS SO ORDERED.

23 Dated: April 16, 2015

/s/ Gary S. Austin
24 UNITED STATES MAGISTRATE JUDGE