

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DANA BOULWARE,

Plaintiff,

v.

AUDREY KING, et al.,

Defendants.

Case No. 1:14-cv-00654-SKO (PC)

FIRST SCREENING ORDER DISMISSING
COMPLAINT, WITH LEAVE TO AMEND,
FOR FAILURE TO STATE A CLAIM
UNDER SECTION 1983

(Doc. 1)

THIRTY-DAY DEADLINE

First Screening Order**I. Screening Requirement and Standard**

Plaintiff Dana Boulware, a civil detainee proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on May 2, 2014. The Court is required to screen Plaintiff's complaint and dismiss the case, in whole or in part, if the Court determines it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice," *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955 (2007)), and courts "are not required to indulge unwarranted inferences," *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681

1 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual allegations are
2 accepted as true, legal conclusions are not. *Iqbal*, 556 U.S. at 678.

3 Pro se litigants are entitled to have their pleadings liberally construed and to have any
4 doubt resolved in their favor, *Wilhelm v. Rotman*, 680 F.3d 1113, 1121-23 (9th Cir. 2012); *Hebbe*
5 *v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010), but Plaintiff's claims must be facially plausible to
6 survive screening, which requires sufficient factual detail to allow the Court to reasonably infer
7 that each named defendant is liable for the misconduct alleged, *Iqbal*, 556 U.S. at 678 (quotation
8 marks omitted); *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer
9 possibility that a defendant acted unlawfully is not sufficient, and mere consistency with liability
10 falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678 (quotation marks
11 omitted); *Moss*, 572 F.3d at 969.

12 **II. Discussion**

13 Plaintiff is a civil detainee at Coalinga State Hospital in Coalinga, California. Plaintiff
14 names Executive Director Audrey King and Chief Director Cliff Allenby as defendants, and for
15 relief, he seeks an order vacating the judgment "regarding lifting the seal from the petitioner's case
16 load and to order a demurrer to be granted on the behalf of the defendant." (Comp., § IV.) Based
17 on Plaintiff's brief statement of claim, he appears to be challenging the fact and/or duration of his
18 civil commitment.

19 Section 1983 provides a cause of action for the violation of Plaintiff's constitutional or
20 other federal rights by persons acting under color of state law. *Nurre v. Whitehead*, 580 F.3d
21 1087, 1092 (9th Cir 2009); *Long v. County of Los Angeles*, 442 F.3d 1178, 1185 (9th Cir. 2006);
22 *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002). To state a claim, Plaintiff must demonstrate
23 a link or causal connection between the actions or omissions of each named defendant and the
24 violation of his federal rights; there is no vicarious liability under section 1983. *Iqbal*, 556 U.S. at
25 676-77, 129 S.Ct. at 1949; *Simmons v. Navajo County, Ariz.*, 609 F.3d 1011, 1020-21 (9th Cir.
26 2010); *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones*, 297 F.3d at 934.

27 Plaintiff's complaint fails to set forth any facts entitling him to relief under section 1983.
28 While Plaintiff's allegations suggest that he is challenging his civil detainment and seeking relief

1 aimed at setting aside his civil commitment, the fact and/or duration of Plaintiff's civil
2 commitment cannot be attacked in this action because a judgment in his favor would imply the
3 invalidity of his civil confinement.¹ *Huftile v. Miccio-Fonseca*, 410 F.3d 1136, 1139-40 (9th Cir.
4 2010). As it appears Plaintiff is presently serving a civil commitment term, he may challenge its
5 legality via a petition for writ of habeas corpus. *Huftile*, 410 F.3d at 1139-40.

6 **III. Conclusion and Order**

7 Plaintiff's complaint fails to state a claim upon which relief may be granted under section
8 1983. Given that Plaintiff is proceeding pro se and his complaint is vague, the Court will provide
9 Plaintiff with one opportunity to amend to clarify the basis for his claim and the relief he seeks.
10 *Akhtar v. Mesa*, 698 F.3d 1202, 1212-13 (9th Cir. 2012); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th
11 Cir. 2000). However, Plaintiff is cautioned that if he is challenging the fact and/or duration of his
12 confinement, as it appears, his claim is not cognizable under section 1983 and that deficiency is
13 not curable. *Huftile*, 410 F.3d at 1139-40.

14 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
15 each named defendant did that led to the deprivation of Plaintiff's federal rights and liability may
16 not be imposed on supervisory personnel under the theory of mere *respondeat superior*, *Iqbal*, 556
17 U.S. at 676-77; *Starr v. Baca*, 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct.
18 2101 (2012). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a
19 right to relief above the speculative level. . . ." *Twombly*, 550 U.S. at 555 (citations omitted).

20 Finally, an amended complaint supercedes the original complaint, *Lacey v. Maricopa*
21 *County*, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be "complete in itself without
22 reference to the prior or superceded pleading," Local Rule 220.

23 Accordingly, it is HEREBY ORDERED that:

24 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim
25 under section 1983;

26 ¹ The Court also notes that Plaintiff fails to link Defendants King and Allenby to any involvement in the alleged
27 violation of his rights, and his allegations suggest the state is an intended target of suit. However, the state and its
28 agencies are immune from suit under section 1983. *E.g.*, *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89,
100, 104 S.Ct. 900 (1984); *Buckwalter v. Nevada Bd. of Medical Examiners*, 678 F.3d 737, 740 n.1 (9th Cir. 2012).

- 1 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 2 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
- 3 amended complaint; and
- 4 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
- 5 action will be dismissed for failure to state a claim.

6

7

8 IT IS SO ORDERED.

9 Dated: November 6, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE