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

GREGORY ELL SHEHEE,)	Case No.: 1:14-cv-00706-AWI-SAB (PC)
)	
Plaintiff,)	
)	ORDER DISMISSING FIRST AMENDED
v.)	COMPLAINT, WITH ONE FINAL
)	OPPORTUNITY TO AMEND
K. TRUMBLY, et al.,)	
)	[ECF No. 25]
Defendants.)	
)	
)	

At the time this action was filed, Plaintiff Gregory Ell Shehee was a civil detainee proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Individuals detained pursuant to California Welfare and Institutions Code § 6600 et seq. are civil detainees and are not prisoners within the meaning of the Prison Litigation Reform Act.¹ Page v. Torrey, 201 F.3d 1136, 1140 (9th Cir. 2000).

Now pending before the Court is Plaintiff’s first amended complaint, filed May 15, 2015. (ECF No. 25.)

**I.
SCREENING REQUIREMENT**

The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that

¹ At the time Plaintiff filed the instant action he was confined at Coalinga State Hospital, however, Plaintiff is presently in the custody of the Fresno County jail.

1 “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. §
2 1915(e)(2)(B).

3 A complaint must contain “a short and plain statement of the claim showing that the pleader is
4 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
5 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
6 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
7 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
8 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
9 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

10 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
11 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
12 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
13 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
14 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
15 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
16 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
17 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
18 U.S. at 678; Moss, 572 F.3d at 969.

19 Although certain portions of the Prison Litigation Reform Act (PLRA) are not applicable to
20 Plaintiff as a civil detainee, section 1915(e)(2)(B) applies to all persons proceeding in forma pauperis.
21 See Calhoun v. Stahl, 254 F.3d 845 (9th Cir. 2001).

22 II.

23 ALLEGATIONS OF COMPLAINT

24 Plaintiff’s allegations are difficult to decipher and understand as the claims are fragmented
25 and sometimes illegible. As far as the Court can determine, Plaintiff contends that false criminal
26 charges were brought against him as a result of certain Defendants abuse of power which resulted in
27 cruel and unusual punishment.

1 Plaintiff further contends that he was subjected to a physical attack by officials at Coalinga
2 State Hospital.

3 **III.**

4 **DISCUSSION**

5 **A. Rule 8 of the Federal Rules of Civil Procedure**

6 The Court advises Plaintiff of the following requirements under the Federal Rules of Civil
7 Procedure regarding the general formatting of his complaint. Plaintiff's complaint must contain "a
8 short and plain statement of the claim showing that [Plaintiff] is entitled to relief." Fed. R. Civ. P.
9 8(a)(2). "Each allegation must be simple, concise, and direct." Federal Rule of Civil Procedure
10 8(d)(1). A party must state its claims or defenses in numbered paragraphs, each limited as far as
11 practicable to a single set of circumstances." Federal Rule of Civil Procedure 10(b). "[E]ach claim
12 founded on a separate transaction or occurrence . . . must be stated in a separate count." Federal Rule
13 of Civil Procedure 10(b).

14 Plaintiff's handwritten first amended complaint is somewhat incoherent and at points illegible.
15 Plaintiff is advised that he must submit "clearly legible" pleadings, and his amended complaint is not.
16 Local Rule 130(b). The Court will address the claims as best it can decipher.

17 **B. False Criminal Charges**

18 As a civil detainee, Plaintiff is entitled to treatment more considerate than that afforded pretrial
19 detainees or convicted criminals. Jones v. Blanas, 393 F.3d 918, 931-32 (9th Cir. 2004). Plaintiff's
20 right to constitutionally adequate conditions of confinement is protected by the substantive component
21 of the Due Process Clause. Youngberg v. Romeo, 457 U.S. 307, 315 (1982).

22 A determination whether Plaintiff's rights were violated requires "balancing of his liberty
23 interests against the relevant state interests." Youngberg, 457 U.S. at 321. Plaintiff is "entitled to
24 more considerate treatment and conditions of confinement than criminals whose conditions of
25 confinement are designed to punish," but the Constitution requires only that courts ensure that
26 professional judgment was exercised. Id., at 321-22. A "decision, if made by a professional, is
27 presumptively valid; liability may be imposed only when the decision by the professional is such a
28 substantial departure from accepted professional judgment, practice, or standards as to demonstrate

1 that the person responsible actually did not base the decision on such a judgment.” Id. at 322-23;
2 compare Clouthier v. County of Contra Costa, 591 F.3d 1232, 1243-44 (9th Cir. 2010) (rejecting the
3 Youngberg standard and applying the deliberate indifference standard to a pretrial detainee’s right to
4 medical care, and noting that pretrial detainees, who are confined to ensure presence at trial, are not
5 similarly situated to those civilly committed). The professional judgment standard is an objective
6 standard and it equates “to that required in ordinary tort cases for a finding of conscious indifference
7 amounting to gross negligence.” Ammons v. Washington Dep’t of Soc. & Health Servs., 648 F.3d
8 1020, 1029 (9th Cir. 2011).

9 To obtain relief under § 1983, a person must establish that a state actor deprived him of a right
10 secured by the Constitution or laws of the United States. Flagg Bros., Inc. v. Brooks, 436 U.S. 149,
11 156 (1978). In this case, even if it is assumed that Defendants reported the events of the alleged
12 assault(s) falsely to cover up certain individuals’ wrongdoings, Plaintiff has not shown that this is a
13 violation of a right secured by the Constitution or laws of the United States. See Knox v. Wainscott,
14 No. 03-C-1429, 2003 WL 21148973, at *9 (N.D. Ill. May 14, 2003) (“However, the plaintiff has no
15 separate cause of action against the defendant Lang for falsifying an injury report. Lang may have
16 engaged in professional misconduct if she fabricated documents to cover up wrongdoing committed
17 by her fellow officers. Nevertheless, her actions did not violate any constitutional right.”).

18 Indeed, if any wrongdoing were “covered up,” this could be a violation of prison regulations or
19 even state law, but there is no showing that it is a violation of any right protected but the Constitution
20 or laws of the United States. Cf. Baker v. McCollan, 443 U.S. 137, 146 (1979) (noting that many
21 claims which may be actionable as violations of state tort law do not amount to constitutional
22 violations); see also Hernandez v. Estelle, 788 F.2d 1154, 1159 (5th Cir. 1986). Thus, even if Plaintiff
23 contends that defendants acted in concert to hide any alleged wrongdoings, “[i]t remains necessary to
24 prove an actual deprivation of a constitutional right; a conspiracy to deprive is insufficient.” Gillum v.
25 City of Kerrville, 3 F.3d 117, 123 (5th Cir. 1993).

26 As to Plaintiff’s challenge to the filing of criminal charges, Plaintiff is advised that the United
27 States Supreme Court has held that to recover damages for an allegedly unconstitutional conviction or
28 imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or

1 sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on
2 direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make
3 such determination, or called into question by a federal court's issuance of a writ of habeas corpus.
4 Heck v. Humphrey, 512 U.S. 477 (1994). Heck applies to claims arising out of pending charges, as
5 appears to be the case here. See Cabrera v. City of Huntington Park, 159 F.3d 374, 380 (9th Cir.
6 1998) (Heck barred plaintiff's false arrest and imprisonment claims until conviction was invalidated);
7 Smithart v. Tower, 79 F.3d 951, 952 (9th Cir. 1996) (Heck barred plaintiff's claims that defendants
8 lacked probable cause to arrest him and brought unfounded criminal charges against him). The
9 practical importance of this rule is that a plaintiff cannot attack his conviction in a civil rights action.
10 The decision must have been successfully attacked before the civil rights action is filed. See Guerrero
11 v. Gates, 442 F.3d 697, 703 (9th Cir. 2006). Indeed, in the first amended complaint, Plaintiff
12 references a pending writ of habeas corpus action in this Court in case number 1:12-cv-01395-AWI-
13 JLT (HC), of which the Court takes judicial notice.² See Valerio v. Boise Cascade Corp., 80 F.R.D.
14 626, 635 n.1 (N.D. Cal. 1978) (court may take judicial notice of court records). A motion to dismiss is
15 pending in that case in which it is noted that on May 7, 2010, criminal charges were filed against
16 Plaintiff in which Plaintiff ultimately pled no contest to misdemeanors. (ECF No. 28 in 1:12-cv-
17 013950AWI-JLT.) Accordingly, Plaintiff cannot pursue a claim in this action based on the filing of
18 false criminal charges.

19 **C. Excessive Force**

20 The substantive component of the Due Process Clause protects civil detainees from
21 unconstitutional conditions of confinement, and Plaintiff has a right to personal safety while in state
22 detention. Youngberg v. Romeo, 457 U.S. 307, 315 (1982).

23 As noted above, the rights of civilly committed persons are protected by the Due Process
24 Clause of the Fourteenth Amendment and not the Cruel and Unusual Punishment Clause of the Eighth
25 Amendment. Endsley v. Luna, No. CV 06-06961-DSF (SS), 2009 WL 789902, at *4 (C.D. Cal. Mar.
26 23, 2009). An excessive force claim by a person, confined in a state institution, who is not a prisoner
27

28 ² Plaintiff incorrectly lists the case number as 1:12-cv-01359-AWI-JLT.

1 subject to punishment, falls under the objective reasonableness standard of the Fourteenth
2 Amendment, which is also applied to excessive force claims by pretrial detainees, and not under the
3 Eighth Amendment excessive force standard. Andrews v. Neer, 253 F.3d 1052, 1061 (9th Cir. 2001).
4 The due process standard applicable to a detainee’s confinement raises “concerns similar to those
5 raised by the housing of pretrial detainees, such as the legitimate institutional interest in the safety and
6 security of guards and other individuals in the facility, order within the facility, and the efficiency of
7 the facility’s operations.” Andrews, 263 F.3d at 1061 (citing Johnson-El v. Schoemehl, 878 F.2d
8 1043, 1048 (8th Cir. 1989).

9 Plaintiff provides only vague allegations as to a physical attack by Coalinga State Hospital
10 personnel and failure of certain individuals who witnessed the event to take appropriate action. There
11 is insufficient information to enable the Court to analyze Plaintiff’s excessive force and/or failure to
12 protect claims under the above standards. Plaintiff fails to describe the events leading to the alleged
13 application of force, his reaction to the force, the duration of the force, and the extent of any injury
14 inflicted. If Plaintiff chooses to amend, he should allege facts demonstrating application of force by
15 any named Defendants for other than penological purposes causing him harm. Iqbal, 556 U.S. at 678.
16 Thus, the Court cannot determine based on the vague allegations set forth in the first amended
17 complaint whether Plaintiff states a plausible claim for relief. The Court will grant Plaintiff one last
18 opportunity to amend the complaint.

19 IV.

20 CONCLUSION AND ORDER

21 For the reasons stated, Plaintiff’s complaint fails to state a claim upon which relief may be
22 granted. Plaintiff is granted one final opportunity to file an amended complaint within thirty (30)
23 days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of
24 this suit by adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605,
25 607 (7th Cir. 2007) (no “buckshot” complaints).

26 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
27 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.
28 Iqbal, 556 U.S. 662, 678. “The inquiry into causation must be individualized and focus on the duties

1 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
2 constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as
3 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .
4 . . .” Twombly, 550 U.S. at 555 (citations omitted).

5 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,
6 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
7 “complete in itself without reference to the prior or superseded pleading,” Local Rule 220. “All
8 causes of action alleged in an original complaint which are not alleged in an amended complaint are
9 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.
10 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 12 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 13 2. Plaintiff’s first amended complaint, filed May 15, 2015, is dismissed for failure to state
14 a claim;
- 15 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
16 amended complaint; and
- 17 4. If Plaintiff fails to file an amended complaint in compliance with this order, this action
18 will be dismissed, with prejudice, for failure to state a claim.

19
20 IT IS SO ORDERED.

21 Dated: May 21, 2015



UNITED STATES MAGISTRATE JUDGE