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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

EARL SIMPSON,

Plaintiff,

v.

YVONE BREWSTER,

Defendant.

CASE NO. 1:14-cv-01536-MJS (PC)

**ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

(ECF No. 1)

**AMENDED COMPLAINT DUE WITHIN
THIRTY (30) DAYS**

Plaintiff is a civil detainee proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 4.) No other parties have appeared in the action. Plaintiff's complaint is before the court for screening.

I. SCREENING REQUIREMENT

The *in forma pauperis* statute provides, "Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii).

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1 **II. PLEADING STANDARD**

2 Section 1983 “provides a cause of action for the deprivation of any rights,
3 privileges, or immunities secured by the Constitution and laws of the United States.”
4 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).
5 Section 1983 is not itself a source of substantive rights, but merely provides a method for
6 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94
7 (1989).

8 To state a claim under § 1983, a plaintiff must allege two essential elements:
9 (1) that a right secured by the Constitution or laws of the United States was violated and
10 (2) that the alleged violation was committed by a person acting under the color of state
11 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d
12 1243, 1245 (9th Cir. 1987).

13 A complaint must contain “a short and plain statement of the claim showing that
14 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
15 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
16 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
17 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
18 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief
19 that is plausible on its face.” Id. Facial plausibility demands more than the mere
20 possibility that a defendant committed misconduct and, while factual allegations are
21 accepted as true, legal conclusions are not. Id. at 677-78.

22 **III. PLAINTIFF'S ALLEGATIONS**

23 Plaintiff is civilly committed as a Mentally Disordered Offender (MDO) at Coaltinga
24 State Hospital (CSH). Defendant Brewster is a trust account agent at CSH. Plaintiff's

1 allegations are very difficult to decipher. However, he seems to be protesting CSH's
2 practice of attaching his social security benefits, stating that he "is filing a claim against
3 the state agent of the prison for concealing annual fundings [sic]... in the amount of
4 \$117,336,746 dollars that was taking [sic] from the petitioner's social security [sic]
5 account...." (ECF No. 1, at 4.) He also alleges, more generally, that "the state charges
6 the patients who are civilly committed daily in the amount about \$467.00 a day through
7 \$573.67 daily... without consent from the patient,"¹ and that the Department of State
8 Hospitals and CSH, specifically, have acted as "debt collectors" by "continuously
9 charging the patient for the cost of care... without consent." (ECF No. 1, at 6.) He
10 alleges this conduct is tortious and constitutes an invasion of a patient's right to his own
11 money, trespass, and libel insofar as it "states to the patient that they [sic] are
12 incompetent to conservator [sic] their own account activities." Plaintiff requests
13 restitution of the funds unlawfully attached.

14 **IV. ANALYSIS**

15 Construed liberally, plaintiff appears to be claiming that Defendant violated
16 procedural due process and the Social Security Act by taking and using Plaintiff's
17 money, including his Social Security benefits, to pay for his care at CSH. Plaintiff
18 apparently also wants to allege several state tort law violations. Plaintiff has not
19 provided sufficient information to support a federal claim, and the Court declines to
20 consider his state claims because he has not alleged compliance with the California Tort
21 Claims Act. The Court will therefore dismiss the complaint, giving Plaintiff leave to
22 amend to correct deficiencies. The Court explains its reasoning and describes the
23 relevant legal standards below.

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27 ¹ Plaintiff does not explain where he derived these figures, nor does he include financial or other
28 supporting documentation with his complaint.

1 **A. Plaintiff's Status**

2 Plaintiff is being held at CSH pursuant to California's Mentally Disordered
3 Offender (MDO) statute. CAL. PENAL CODE §§ 2960 et seq. Pursuant to this statute, an
4 individual convicted of certain enumerated crimes and meeting other criteria may be
5 civilly committed for "involuntary treatment of a severe mental disorder" at a state
6 psychiatric hospital as a condition of parole. People v. McKee, 223 P.3d 566, 576-577
7 (Cal. 2010); CAL. PENAL CODE §§ 2962; 2966.

8 Although the state retains custody of MDOs in part because of the criminal
9 behavior that led to their incarceration, the object of their involuntary commitment is "not
10 punitive or penal in nature." In re Qawi, 81 P.3d 224, 227 (Cal. 2004); see also Kansas
11 v. Hendricks, 521 U.S. 346, 368-369 (1997)(holding that civil commitment pursuant to
12 Kansan sexually violent predator statute was not punitive in nature); People v. McKee,
13 223 P.3d 566, 576-577 (Cal. 2010)(same for California's Sexually Violent Predator Act).
14 Instead, the purpose of committing the offender is to "provide [him] with treatment while
15 at the same time protecting the general public from the danger to society posed by an
16 offender with a mental disorder." Qawi, 81 P.3d at 227.

17 In keeping with civil commitment's non-punitive purpose, "persons who have been
18 involuntarily committed are entitled to more considerate treatment and conditions of
19 confinement than criminals whose conditions of confinement are designed to punish."
20 Jones v. Blanas, 393 F.3d 918, 931 (9th Cir. 2004)(citing Youngberg v. Romeo, 457
21 U.S. 307, 322 (1982)). Therefore, jurisprudence outlining treatment of prisoners
22 provides a constitutional floor for treatment of civil detainees, and civil detainees must,
23 "at a minimum, be afforded the rights afforded prisoners confined in a penal institution."
24 Hubbs v. Cty. of San Bernardino, 538 F.Supp.2d 1254, 1266 (C.D. Cal. 2008)(citing
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Hydrick v. Hunter, 500 F.3d 978, 998 (9th Cir. 2007), vacated by 556 U.S. 1256 (2009)); see also Jones, 393 F.3d at 928-929 (applying the prison mailbox rule to civil detainees and discussing generally the constitutional standards applicable to them).

B. California Welfare and Institutions Code § 7281

CAL. WELF. & INST. CODE § 7281 provides that funds belonging to a patient committed to an institution under the jurisdiction of the Department of State Hospitals "shall be deposited in the name of that patient in the patients' [sic] personal deposit fund." Whenever the sum in any patient's personal deposit fund exceeds \$500, "the excess may be applied to the payment of the care, support, maintenance, and medical attention of the patient." CAL. WELF. & INST. CODE § 7281. The general constitutionality of § 7281 is not in dispute. See Crawford v. Gould, 56 F.3d 1162, 1165-1166 (9th Cir. 1995); Williams v. Phillips, No. 1:11-CV-00456 2012 WL 1076251, at *10 (E.D. Cal. Mar. 29, 2012); see also Fayle v. Stapley, 607 F.2d 858, 863 (9th Cir. 1979)(concluding, with reference to an analogous Arizona statute, that "it is not unreasonable to require the patient to contribute to his care to the extent of his reasonable ability").

Here, Plaintiff is committed to CSH, which is under the jurisdiction of the Department of State Hospitals. Therefore he is subject to CAL. WELF. & INST. CODE § 7281. To the extent Plaintiff argues in his complaint that charging him for the cost of care is, on its face, unlawful, he is mistaken. To the extent he argues more narrowly that particular withdrawals violated his procedural due process rights, or that use of his Social Security benefits violated the anti-attachment provision of the Social Security Act, the court examines these potential claims in the sections that follow.

1 **C. Procedural Due Process**

2 Plaintiff fails to state a procedural objection to withdrawal of funds other than
3 Social Security benefits from his trust account without his consent.

4 The Due Process Clause of the Fourteenth Amendment guarantees “procedural
5 fairness” and protects prisoners and civil detainees alike from being deprived of property
6 without due process of law. See Wolff v. McDonnell, 418 U.S. 539, 556 (1974); see also
7 Crawford, 56 F.3d at 1165 (9th Cir. 1995)(citing with approval district court’s finding that
8 withdrawals from involuntarily committed patients’ trust accounts violated due process).
9 Where a plaintiff is deprived of a protected property interest by operation of “established
10 state procedure, rather than random and unauthorized action,” then he or she is
11 generally entitled to predeprivation process. Hudson v. Palmer, 468 U.S. 517, 532
12 (1984)(citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 435-436 (1982)); Newman
13 v. Sathyavaglswaran, 287 F.3d 786, 799 (9th Cir. 2002).

14 Here, an involuntarily committed mental patient has “substantial property
15 interests” in his deposit fund and the benefits deposited therein, Fayle, 607 F.2d at 861
16 n. 2, and Defendants deprived Plaintiff of this property pursuant to § 7821, an
17 “established state procedure.” Therefore, Plaintiff was entitled to some predeprivation
18 process before his money was withdrawn. Id.; see also Crawford, 56 F.3d at 1165;
19 Brinkman v. Rahm, 878 F.2d 263, 265 (9th Cir. 1989).

20 Indeed, in Crawford, the Ninth Circuit outlined the constitutionally adequate
21 process due a patient prior to a withdrawal under §7821: the state must 1) inform the
22 patient of his or her proposed share of the cost of care and the facts on which the
23 determination was made; and 2) of his or her right to appeal the share of cost
24 determination; 3) provide a description of the appeal process and procedure; and 4)

1 inform the patient that certain federal benefits, including Social Security benefits, are
2 exempt from legal process and cannot be used to pay the plaintiff's cost of care without
3 the patient's consent. 56 F.3d at 1165 (quoting the district court's remedy for the
4 constitutionally deficient notice California provided). However, the patient's consent is
5 not required to withdraw funds other than Social Security benefits. See id., at 1166-1167;
6 see also Fayle, 607 F.2d at 861 (finding that Fayle was entitled to notice and a hearing
7 prior to entry of a court order authorizing withdrawals from his account, but not that his
8 consent was required).

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10 Here, Plaintiff has neither described the process he received prior to the
11 withdrawals from his trust account, nor indicated that such process failed to meet the
12 requirements in Crawford. Instead, he claims only that his lack of consent makes the
13 withdrawals unconstitutional. For the reasons explained above, he fails to state a due
14 process claim on this basis. The Court nevertheless will give him leave to amend to
15 plead true facts indicating that the notice he received of withdrawals was constitutionally
16 inadequate.

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18 **D. 42 U.S.C. § 407(a)**

19 Plaintiff's consent *may*, however, have been necessary to withdraw his Social
20 Security benefits. Section § 407(a) of the Social Security Act limits the availability of the
21 benefits to be used to satisfy debts, providing that:

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23 "The right of any person to any future [old-age,
24 survivors, and disability insurance benefits] will not be
25 transferable or assignable, at law or in equity, and none of
26 the moneys paid or payable or rights existing under this
27 subchapter shall be subject to execution, levy, attachment,
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1 garnishment, or other legal process or to the operation of any
2 bankruptcy or insolvency law.”

3 42 U.S.C. § 407(a).

4 Section 407(a) preempts state statutes authorizing use of institutionalized
5 patients’ benefits to pay for their care, at least where the state is not managing the
6 benefits on behalf of the patient. Bennett v. Arkansas, 485 U.S. 395, 397
7 (1988)(Arkansas statute allowing attachment of Social Security benefits for prisoner’s
8 care violated the Supremacy Clause); Crawford, 56 F.3d at 1165 (applying Bennett to
9 California statute); Brinkman, 878 F.2d at 263(applying Bennett to Washington statute).
10 The state’s use of the money is considered to be a form of “attachment,” and therefore a
11 violation of § 407(a). Wash. St. Dept. of Soc. Serv. v. Guardianship Estate of Keffeler;
12 537 U.S. 371, 388 (2003); Bennett, 485 U.S. at 397-398. Thus, in Crawford, the Ninth
13 Circuit concluded that “[a]bsent consent, a state has no valid means of obtaining an
14 institutionalized person’s Social Security benefits.” 56 F.3d at 1167. California could only
15 attach the benefits after notifying patients that the money was otherwise “exempt from
16 legal process,” and the patients provided “knowing, affirmative, and unequivocal
17 consent.” Id.

18 Crawford, like Bennett and Brinkman before it, dealt with a situation in which the
19 state did not manage plaintiffs’ benefits for them, but instead took the money directly
20 from their accounts. See Crawford, 56 F.3d at 1164 (explaining process by which
21 California withdraws money from patients’ trust accounts); see also Washington State
22 Dept. of Soc. Serv. v. Guardianship Estate of Keffeler; 537 U.S. 371, 388-389
23 (2003)(distinguishing Bennett); Mason v. Sybinski, 280 F.3d 788, 792-793 (7th Cir.
24 2002)(same). However, where a Social Security beneficiary is “legally incompetent or
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1 mentally incapable of managing benefit payments,” SSA regulations allow the public
2 institution having custody of the beneficiary to be appointed “representative payee” of
3 the benefits. 20 C.F.R. § 404.2001, § 404.2010(a)(1), § 404.2021(a)(3). In other words,
4 the SSA can formally designate a state hospital to receive benefits on behalf of a person
5 committed to its custody. 20 C.F.R. § 404.2001; § 404.2021(a)(3); Sybinski, 280 F.3d at
6 793 (Indiana psychiatric hospital lawfully appointed representative payee of mental
7 patients’ benefits).

8 Where an institution has been properly appointed a representative payee, §
9 407(a) does not prohibit the institution from applying a recipient’s benefits to the cost of
10 his or her care, irrespective of consent. See Keffeler, 537 U.S. at 386-389 (section
11 407(a) did not bar representative payee social services agency from using foster
12 children’s social security benefits to reimburse foster parents for costs of caring for the
13 children); Sybinski, 280 F.3d at 792-793 (analogous result for state hospital serving as
14 representative payee of mental patients’ benefits); see also Gossett v. Czech, 581 F.3d
15 891, 894-895 (9th Cir. 2009)(extending rationale of Keffeler to use of veterans’ benefits).
16 The formalized relationship between the public entity and the beneficiary means that use
17 of the beneficiary’s funds does not amount to “attachment” or “other legal process” within
18 the meaning of 407(a), but instead to “reimbursement” of “funds already in the
19 department’s possession and control, held on terms that allow the reimbursement.”
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21 Keffeler, 537 U.S. at 386; accord Gossett, 581 F.3d at 894.

22 Based on the foregoing, if Plaintiff’s benefits were taken directly from his account
23 without notification or consent, he could potentially have a valid claim under Crawford.
24 However, if CSH acts as his representative payee, use of the benefits to pay for his care
25 would appear to pass constitutional muster under Keffeler even absent Plaintiff’s
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1 consent. Here, Plaintiff has not provided enough information for the Court to determine
2 in which situation Plaintiff finds himself. Plaintiff alleges only that Defendant has used
3 his social security benefits to pay for his care at CSH. He does not state whether he: 1)
4 refused consent to this use of his benefits; 2) was notified of his right to refuse consent
5 to this use; or 3) receives his benefits directly or through a representative payee. Without
6 this information, he fails to state a claim for a violation of § 407(a). The Court therefore
7 dismisses his claim, but gives leave to amend to correct the noted deficiencies. In
8 addition, Plaintiff is to provide more precise information about the amount of money he
9 receives in Social Security benefits and the portion of such benefits being withdrawn.
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11 The suggestion that this *in forma pauperis* Plaintiff receives \$117,336,746.00 in benefits
12 each year may in and of itself preclude a finding that the claim is plausible under
13 Ashcroft v. Iqbal, 556 U.S. at 678.
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15 **E. State Tort Claims**

16 The California Tort Claims Act requires plaintiffs to present tort claims against
17 public entities to the California Victim Compensation and Government Claims Board no
18 more than six months after the cause of action accrues. CAL. GOVT. CODE § 905.2, 910,
19 911.2, 945.4, 950-950.2. Presentation of a written claim, and action on or rejection of
20 the claim, are prerequisites to filing suit. Castaneda v. CDCR, 212 Cal. App. 4th 1051,
21 1061 (Cal. Ct. App. 2013); Easter v. CDC, 694 F.Supp.2d 1177, 1185-1186 (S.D. Cal.
22 2010). Here, Plaintiff has not alleged compliance with the Act, so the Court declines to
23 address the validity of his state tort claims.
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25 The Court will not exercise supplemental jurisdiction over a state law claim absent
26 a cognizable federal claim. 28 U.S.C. § 1337(c)(3); Herman Family Revocable Trust v.
27 Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001); Brown v. Lucky Stores, Inc., 246 F.3d
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1 1182, 1189 (9th Cir. 2001). "When . . . the court dismisses the federal claim leaving only
2 state claims for resolution, the court should decline jurisdiction over the state claims and
3 dismiss them without prejudice." Les Shockley Racing v. National Hot Rod Ass'n, 884
4 F.2d 504, 509 (9th Cir. 1989). If Plaintiff elects to submit an amended complaint alleging
5 compliance with the Tort Claims Act, the Court will reexamine whether to exercise
6 supplemental jurisdiction over Plaintiff's state law claims.
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8 **E. RELIEF**

9 Plaintiff requests both an injunction and restitution of the monies already taken
10 from his deposit account. It is not clear whether such relief is available to him. While a
11 plaintiff who establishes that his Social Security benefits have been attached unlawfully
12 by a state agency may be entitled to an injunction preventing further attachments,
13 Crawford, 56 F.3d 1163-1164, Eleventh Amendment immunity may bar restitution of
14 benefits already attached. See Brinkman, 878 F.2d at 265 n. 1; see also Diaz v. Carlson,
15 5 F.Supp.2d 809, 814 (C.D. Cal. 1997).

16 **V. CONCLUSION AND ORDER**

17 Plaintiff fails to state any cognizable claim against Defendant Brewster.
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19 The Court grants Plaintiff the opportunity to correct the deficiencies analyzed
20 above in an amended complaint. See Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir.
21 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). If Plaintiff amends, he
22 may not change the nature of this suit by adding new, unrelated claims in his amended
23 complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)(no "buckshot" complaint).
24 An amended complaint supersedes the prior complaint. Lacey v. Maricopa County, 693
25 F.3d 896, 927 (9th Cir. 2012), and must be "complete in itself without reference to the
26 prior or superseded pleading." Local Rule 220.
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1 Based on the foregoing, it is HEREBY ORDERED that:

2 1. Plaintiff's signed first amended complaint (ECF No. 1) is DISMISSED for
3 failure to state a claim upon which relief may be granted,
4 2. The Clerk's Office shall send Plaintiff (1) a blank civil rights amended
5 complaint form and (2) a copy of his complaint filed October 1, 2014,
6 3. Plaintiff shall file an amended complaint within thirty (30) days from service
7 of this order, and
8 4. If Plaintiff fails to comply with this order, the Court will recommend that this
9 action be dismissed, without prejudice, for failure to obey a court order.

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11 IT IS SO ORDERED.
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13 Dated: March 6, 2015

14 /s/ *Michael J. Seng*
15 UNITED STATES MAGISTRATE JUDGE
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