

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD S. KINDRED,

Plaintiff,

v.

CLIFF ALLENBY, et al.,

Defendants.

CASE NO. 1:14-cv-01652-AWI-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. His 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).

II. PLEADING STANDARD

Section 1983 “provides a cause of action for the deprivation of any rights,

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

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

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

20 **III. PLAINTIFF’S ALLEGATIONS**

21 Plaintiff is detained at Coalinga State Hospital (“CSH”), where the acts giving rise
22 to his complaint occurred. Plaintiff names as Defendants: (1) the California Department
23 of State Hospitals, (2) Cliff Allenby, Director of the California Department of State
24 Hospitals, (3) Audrey King, (4) Remi Smith, (5) Mathew Collins, (6) Jeanette Rivera,
25 (7) Angela Padilla, (8) Guadalupe McKenzie, (9) Kenneth Underwood, (10) Marissa
26 Bigot, (11) Paul Alkehougie, (12) Cinithia Martinez, (13) Angel Felix, (14) Jose
27
28

1 Lopez,(15) Edward Tongwa, (16) Jorge Zavala, (17) Kenneth Bell, (18) Tom Faina, (19)
2 Daniel Wagoner, (20) Dr. Jeffrey Hasson, and (21) Doug Veit.

3 Plaintiff's allegations may be summarized essentially as follows:

4 Plaintiff is a practicing Native American. Since May 2014, Defendants have
5 interfered with and denied Plaintiff's right to practice his "way of life" in violation of the
6 First Amendment.

7 In May 2014, Defendant Bigot denied Plaintiff and other Native Americans the
8 right to hold Sunrise Prayer Ceremonies even though other religions are allowed to
9 continue this practice. Defendant Bigot retaliated against Plaintiff and other Native
10 Americans who displayed sacred or spiritual items. Plaintiff was retaliated against for
11 having a Dream Catcher hanging over his head, a common practice for Native
12 Americans. Defendant Bigot ordered Defendant Rivera to confiscate Plaintiff's spiritual
13 rug. Defendant Felix desecrated Plaintiff's medicine bag by attempting to confiscate it.

14 Defendants Allenby, King, Smith, Collins, Padilla, McKenzie, Underwood,
15 Alkehougie, Martinez, Lopez, Tongwa, Zavala, and Bell participated in denying Plaintiff
16 spiritual items that are approved by the California Department of State Hospitals and
17 CSH and/or participated in retaliation against and harassment of Plaintiff.

18 Plaintiff also was denied his right to Due Process under the Fifth and Fourteenth
19 Amendments as follows:

20 In July and September 2014, Plaintiff received spiritual packages from a
21 recognized vendor of Native American spiritual items. Plaintiff was denied his items.

22 Plaintiff filed complaints with the California Office of Patient's Rights. His
23 complaints were not reviewed by the Office's Advocates or Defendant King within the
24 allotted time frame.

25 Defendants Smith, Collins, Bigot, Veit, Hasson, Zavala, and McKenzie interfered
26 with Plaintiff's ability to file Elder Abuse/Dependent Adult Abuse complaints. These
27
28

1 Defendants also refused to adhere to CSH administrative directives regarding “Denial of
2 Rights” and the seizure of contraband property.

3 Defendants King and Michell¹ failed to investigate allegations of Elder/Dependent
4 Adult Abuse as required under state law.

5 Defendant Rivera filed false police reports with the Department of Police Services
6 to justify assaulting Plaintiff on August 29, 2014.

7 CSH failed to investigate and charge Defendant Bell with Elderly/Dependent Adult
8 Abuse despite Defendant Bell’s continuous retaliation against Plaintiff for filing
9 complaints. This was done to circumvent the “Statewide Contraband List.”

10 Plaintiff seeks declaratory and injunctive relief, and compensatory and punitive
11 damages.

12 **IV. ANALYSIS**

13 **A. Improper Joinder of Unrelated Claims**

14 Federal Rule of Civil Procedure 18(a) allows a party to “join, as independent or
15 alternative claims, as many claims as it has against an opposing party.” However, Rule
16 20(a)(2) permits a plaintiff to sue multiple defendants in the same action only if “any right
17 to relief is asserted against them jointly, severally, or in the alternative with respect to or
18 arising out of the same transaction, occurrence, or series of transactions or
19 occurrences,” and there is a “question of law or fact common to all defendants.” “Thus
20 multiple claims against a single party are fine, but Claim A against Defendant 1 should
21 not be joined with unrelated Claim B against Defendant 2. Unrelated claims against
22 different defendants belong in different suits . . .” See George v. Smith, 507 F.3d 605,
23 607 (7th Cir.2007) (citing 28 U.S.C. § 1915(g)).

24 Plaintiff attempts to bring several unrelated claims in this action. Based on the
25 minimal facts alleged, it is unclear whether Plaintiff’s claims regarding his Native
26 American practices arise out of the same transaction or occurrence or raise a common
27

28 ¹ Plaintiff did not identify Michell as a Defendant.

1 question of law or fact. Furthermore, these claims plainly do not arise out of the same
2 transaction or occurrence as Plaintiff's allegations that certain Defendants interfered with
3 his ability to file administrative grievances or legal claims, his allegations regarding
4 Elder/Dependent Adult Abuse, or his allegations regarding false police reports. Plaintiff
5 may not bring all of these claims in a single action.

6 Plaintiff will be given leave to amend. If he chooses to do so, he must proceed in
7 this action only on those claims against different Defendants that arise out of the same
8 transaction or occurrence, or that involve a common question of law or fact. The
9 remainder of the screening order will address the legal standards applicable to what
10 appear to be Plaintiff's claims.

11 **B. Linkage**

12 Under § 1983, Plaintiff must demonstrate that each named defendant personally
13 participated in the deprivation of his rights. Iqbal, 556 U.S. 662, 676-77 (2009); Simmons
14 v. Navajo Cnty., Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton,
15 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
16 2002). Liability may not be imposed on supervisory personnel under the theory of
17 respondeat superior, as each defendant is only liable for his or her own misconduct.
18 Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at 1235. Supervisors may only be held liable
19 if they "participated in or directed the violations, or knew of the violations and failed to act
20 to prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989); accord Starr v.
21 Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett, 567 F.3d 554, 570
22 (9th Cir. 2009); Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th
23 Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997).

24 Plaintiff alleges that Defendants Allenby, King, Smith, Collins, Padilla, McKenzie,
25 Underwood, Alkehougie, Martinez, Lopez, Tonga, Zavala, and Bell denied Plaintiff
26 spiritual items and/or participated in retaliation against and harassment of Plaintiff. This
27 allegation is insufficient to link the Defendants to any unconstitutional conduct. Plaintiff
28

1 must allege specific facts that identify how each Defendant personally participated in the
2 denial of his rights, or knew of the violations and failed to act.

3 Additionally, Plaintiff does not identify which Defendants, if any, were responsible
4 for denying him spiritual packages. Nor does he identify how Defendants Smith, Collins,
5 Bigot, Veit, Hasson, Zavala, and McKenzie interfered with his ability to file Elder
6 Abuse/Dependent Adult Abuse complaints or improperly seized Plaintiff's property.
7 Lastly, Plaintiff lists no factual allegations concerning Defendants Faina and Wagoner.

8 Plaintiff has not alleged how these Defendants personally participated in the
9 deprivation of his rights. If Plaintiff chooses to file an amended complaint he must link
10 each named defendant to his claims.

11 **C. Eleventh Amendment Immunity**

12 Plaintiff has named the California Department of State Hospitals as a Defendant.
13 However, the Eleventh Amendment erects a general bar against federal lawsuits brought
14 against the state. Wolfson v. Brammer, 616 F.3d 1045, 1065-66 (9th Cir. 2010) (citation
15 omitted). While "[t]he Eleventh Amendment does not bar suits against a state official for
16 prospective relief," id. at 1066, suits against the state or its agencies are barred
17 absolutely, regardless of the form of relief sought, e.g., Pennhurst State Sch. & Hosp. v.
18 Halderman, 465 U.S. 89, 100 (1984). Thus, Plaintiff may not maintain a claim against the
19 California Department of State Hospitals.

20 **D. Free Exercise**

21 Civil detainees retain the protections afforded by the First Amendment, including
22 the right to freely practice their religion. See O'Lone v. Estate of Shabazz, 482 U.S. 347,
23 348 (1987) (citations omitted); see also Youngberg v. Romero, 457 U.S. 307, 322 (1982)
24 (holding civilly detained persons must be afforded "more considerate treatment and
25 conditions of confinement than criminals whose conditions of confinement are designed
26 to punish"). In order to establish a cause of action under the Free Exercise Clause,
27 Plaintiff must show that a restriction substantially burdened the practice of his religion by
28

1 preventing him from engaging in conduct which he sincerely believes is consistent with
2 his faith. Shakur v. Schriro, 514 F.3d 878, 884-85 (9th Cir. 2008). Additionally, Plaintiff
3 must show that the restriction is not required to maintain institutional security and
4 preserve internal order and discipline. See Pierce v. Cnty. of Orange, 562 F.3d 1190,
5 1209 (9th Cir. 2008).

6 Plaintiff has alleged insufficient facts for the Court to determine whether he has
7 suffered a Free Exercise violation. Plaintiff alleges that Defendant Bigot denied him the
8 right to hold Sunrise Prayer Ceremonies, retaliated against him for displaying spiritual
9 items, and ordered that his spiritual rug be confiscated. He also alleges that Defendant
10 Rivera confiscated his spiritual rug and Defendants Felix attempted to confiscate his
11 medicine bag. Finally, he alleges that numerous Defendants denied him spiritual items or
12 packages, retaliated against him and harassed him. However, Plaintiff has not alleged
13 that any of this conduct substantially burdened the exercise of his religion. Nor has he
14 presented facts to show that the Defendants' conduct was not required to maintain
15 institutional security or to preserve internal order and discipline. Lastly, Plaintiff's
16 conclusory allegations of harassment and retaliation leave the Court no basis for
17 determining whether the practice of Plaintiff's religion was burdened.

18 If Plaintiff chooses to amend, he must allege facts to show that the practice of his
19 religion was substantially burdened by Defendants' conduct, and that their conduct was
20 not required to maintain institutional security or preserve internal order and discipline.

21 **E. Equal Protection**

22 Plaintiff alleges he was denied the right to perform Sunrise Prayer Ceremonies
23 even though other religions were allowed to do so. In this regard, Plaintiff may intend to
24 allege an Equal Protection claim.

25 The Equal Protection Clause requires that persons who are similarly situated be
26 treated alike. City of Cleburne, Tex. v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439
27 (1985). An equal protection claim may be established by showing that the defendant
28

1 intentionally discriminated against the plaintiff based on the plaintiff's membership in a
2 protected class, Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), Lee v. City of
3 Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated individuals were
4 intentionally treated differently without a rational relationship to a legitimate state
5 purpose, Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000); see also Lazy Y
6 Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir. 2008); North Pacifica LLC v. City of
7 Pacifica, 526 F.3d 478, 486 (9th Cir. 2008). To allege a religious discrimination claim,
8 Plaintiff must allege facts sufficient to show that prison officials intentionally discriminated
9 against him on the basis of his religion by failing to provide him a reasonable opportunity
10 to pursue his faith compared to other similarly situated religious groups. Cruz v. Beto,
11 405 U.S. 319, 321-22 (1972) (per curiam).

12 Plaintiff has not alleged that any of the Defendants intentionally discriminated
13 against him on the basis of his religion or that he was not provided a reasonably
14 opportunity to pursue his faith compared to other similarly situated religious groups.
15 Although Plaintiff alleges that he was prevented from engaging in Sunrise Prayer
16 Ceremonies that were permitted for other groups, he has not stated whether he was
17 provided other reasonably opportunities to pursue his faith.

18 **F. Retaliation**

19 Plaintiff alleges he was retaliated against in relation to practicing his Native
20 American “way of life.” He also alleges that Defendant Bell retaliated against him for
21 filing complaints.

22 “[A] viable claim of First Amendment retaliation entails five basic elements: (1) An
23 assertion that a state actor took some adverse action against an inmate (2) because of
24 (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s
25 exercise of his First Amendment rights, and (5) the action did not reasonably advance a
26 legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005).

1 The second element focuses on causation and motive. See Brodheim v. Cry, 584
2 F.3d 1262, 1271 (9th Cir. 2009). A plaintiff must show that his protected conduct was a
3 “‘substantial’ or ‘motivating’ factor behind the defendant’s conduct.” Id. (quoting
4 Sorrano’s Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989). Although it can
5 be difficult to establish the motive or intent of the defendant, a plaintiff may rely on
6 circumstantial evidence. Bruce, 351 F.3d at 1289 (finding that a prisoner established a
7 triable issue of fact regarding prison officials’ retaliatory motives by raising issues of
8 suspect timing, evidence, and statements); Hines v. Gomez, 108 F.3d 265, 267-68 (9th
9 Cir. 1997); Pratt v. Rowland, 65 F.3d 802, 808 (9th Cir. 1995) (“timing can properly be
10 considered as circumstantial evidence of retaliatory intent”).

11 In terms of the third prerequisite, filing a grievance is a protected action under the
12 First Amendment. Valandingham v. Bojorquez, 866 F.2d 1135, 1138 (9th Cir. 1989).

13 With respect to the fourth prong, “[it] would be unjust to allow a defendant to
14 escape liability for a First Amendment violation merely because an unusually determined
15 plaintiff persists in his protected activity” Mendocino Envtl. Ctr. v. Mendocino Cnty.,
16 192 F.3d 1283, 1300 (9th Cir. 1999). The correct inquiry is to determine whether an
17 official’s acts would chill or silence a person of ordinary firmness from future First
18 Amendment activities. Rhodes, 408 F.3d at 568-69 (citing Mendocino Envtl. Ctr., 192
19 F.3d at 1300).

20 With respect to the fifth prong, a prisoner must affirmatively allege that “‘the prison
21 authorities’ retaliatory action did not advance legitimate goals of the correctional
22 institution or was not tailored narrowly enough to achieve such goals.” Rizzo v. Dawson,
23 778 F.2d 527, 532 (9th Cir. 1985).

24 Plaintiff does not specify in any way how he was retaliated against. The Court is
25 unable to discern whether he was subject to any adverse action that would chill a person
26 of ordinary firmness. Additionally, Plaintiff has supplied no facts from which it may be
27
28

1 inferred that any such adverse action was taken because of Plaintiff's protected First
2 Amendment activities or that such action did not advance legitimate correctional goals.
3 Plaintiff will be given leave to amend.

4 **G. Due Process**

5 Plaintiff states his intent to bring a Due Process claim under both the Fifth and the
6 Fourteenth Amendments. "[T]he Fifth Amendment's due process clause only applies to
7 the federal government." Bingue v. Prunchak, 512 F.3d 1169, 1174 (9th Cir. 2008).
8 Because all of the named Defendants appear to be state officials, the Court will analyze
9 Plaintiff's claims under the Fourteenth Amendment.

10 Plaintiff appears to allege that his Due Process rights were violated when (1) his
11 spiritual packages were denied; (2) his complaints to the California Office of Patient's
12 Rights were not timely reviewed, and (3) a false police report was filed against him.

13 The Due Process Clause protects prisoners from being deprived of property
14 without due process of law. Wolff v. McDonnell, 418 U.S. 539, 556 (1974). While the
15 deprivation of property pursuant to an established government procedure is actionable
16 under the Due Process Clause, Hudson v. Palmer, 468 U.S. 517, 532 (1984) (citing
17 Logan v. Zimmerman Brush Co., 455 U.S. 422, 435–36 (1982)),² neither negligent nor
18 unauthorized intentional deprivations of property by a governmental employee
19 "constitute a violation of the procedural requirements of the Due Process Clause of the
20 Fourteenth Amendment if a meaningful post deprivation remedy for the loss is available."
21 Hudson, 468 U.S. at 533; see also Raditch v. United States, 929 F.2d 478, 481 (9th Cir.
22 1991) ("Although Hudson involved § 1983 and the Fourteenth Amendment, the same
23 due process principles apply to the federal government through the Fifth Amendment.").

24 Plaintiff has not alleged sufficient facts for the Court to determine whether the
25 denial of his spiritual packages was pursuant to an established government procedure or
26

27 ² An authorized deprivation is one carried out pursuant to established state procedures, regulations, or
28 statutes. Piatt v. McDougall, 773 F.2d 1032, 1036 (9th Cir.1985); see also Knudson v. City of Ellensburg,
832 F.2d 1142, 1149 (9th Cir.1987).

1 the result of negligent, or intentional but unauthorized conduct of any of the Defendants.
2 Assuming the latter, such an unauthorized, intentional deprivation of property requires
3 that Plaintiff be provided a meaningful post-deprivation remedy. California law provides a
4 post-deprivation remedy for Plaintiff's property deprivation. Barnett v. Centoni, 31 F.3d
5 813, 816-17 (9th Cir. 1994).

6 Plaintiff's allegation that his complaints to the California Office of Patient's Rights
7 were not timely reviewed does not state a Due Process claim. "The Fourteenth
8 Amendment's Due Process Clause protects persons against deprivations of life, liberty,
9 or property; and those who seek to invoke its procedural protection must establish that
10 one of these interests is at stake." Wilkinson v. Austin, 545 U.S. 209, 221 (2005).
11 Plaintiff does not have protected liberty interest in processing administrative
12 complaints, and therefore, he cannot pursue a claim for denial of due process with
13 respect to the handling or resolution of those complaints. See Ramirez v. Galaza, 334
14 F.3d 850, 860 (9th Cir. 2003) (citing Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)).

15 Plaintiff's allegation that Defendant Rivera filed a false police report against him
16 also is insufficient to state a claim. The Ninth Circuit has recognized "a clearly
17 established constitutional due process right not to be subjected to criminal charges on
18 the basis of false evidence that was deliberately fabricated by the government."
19 Devereaux v. Abbey, 263 F.3d 1070, 1074-75 (9th Cir. 2001); see also Costanich v.
20 Dep't of Soc. & Health Servs., 627 F.3d 1101, 1111-12 (9th Cir. 2010) (relying on
21 Devereaux to hold that a state investigator "who deliberately mischaracterizes witness
22 statements in her investigative report also commits a constitutional violation"). To state
23 such a claim, Plaintiff must point to evidence that supports at least one of the following
24 two propositions: "(1) Defendants continued their investigation of [Plaintiff] despite the
25 fact that they knew or should have known that he was innocent; or (2) Defendants used
26 investigative techniques that were so coercive and abusive that they knew or should
27 have known that those techniques would yield false information." Devereaux, 263 F.3d
28

1 at 1076. Plaintiff has not alleged such facts, nor has he alleged whether he was
2 subjected to criminal charges.

3 **H. Access to Courts**

4 Plaintiff alleges Defendants Smith, Collins, Bigot, Veit, Hasson, Zavala, and
5 McKenzie interfered with Plaintiff's ability to file Elder Abuse/Dependent Adult Abuse
6 complaints. It is unclear whether the complaints Plaintiff refers to were administrative or
7 intended to be filed in Court. Nevertheless, the Court will provide Plaintiff the legal
8 standard for a First Amendment Access to Courts claim.

9 Plaintiff has a fundamental right of access to the courts. Lewis v. Casey, 518 U.S.
10 343, 346 (1996). The right is limited to direct criminal appeals, habeas petitions, and civil
11 rights actions. Id. at 354. Claims for denial of access to the courts may arise from the
12 frustration or hindrance of "a litigating opportunity yet to be gained" (forward-looking
13 access claim) or from the loss of a meritorious suit that cannot now be tried (backward-
14 looking claim). Christopher v. Harbury, 536 U.S. 403, 412-15 (2002). A plaintiff must
15 show that he suffered an "actual injury" by being shut out of court. Lewis, 518 U.S. at
16 350-51. An "actual injury" is one that hinders the plaintiff's ability to pursue a legal claim.
17 Id. at 351.

18 **I. State Law Claims**

19 The Court will not exercise supplemental jurisdiction over any state law claim
20 absent a cognizable federal claim. 28 U.S.C. § 1367(a); Herman Family Revocable Trust
21 v. Teddy Bear, 254 F.3d 802, 805 (9th Cir. 2001); see also Gini v. Las Vegas Metro.
22 Police Dep't, 40 F.3d 1041, 1046 (9th Cir. 1994). "When . . . the court dismisses the
23 federal claim leaving only state claims for resolution, the court should decline jurisdiction
24 over the state claims and dismiss them without prejudice." Les Shockley Racing v.
25 National Hot Rod Ass'n, 884 F.2d 504, 509 (9th Cir. 1989).

26 Because Plaintiff has not alleged any cognizable federal claims, the Court will not
27 exercise supplemental jurisdiction over his state law claim. Plaintiff may amend his state
28

1 law claims, but if he fails to allege a viable federal claim in his amended complaint, the
2 Court will not exercise supplemental jurisdiction over his state law claims. 28 U.S.C. §
3 1367(a); Herman Family Revocable Trust, 254 F.3d at 805. The Court herein will
4 address what appear to be Plaintiff's intended state law claims.

5 Plaintiff states that administrative directives regarding "Denial of Rights" and the
6 seizure of contraband were not followed. Plaintiff has not identified the directives he
7 believes were not followed. In any event, administrative directives governing the conduct
8 of CSH officials do not necessarily entitle a detainee to sue civilly for their violation.
9 Plaintiff has cited no authority to support a finding of an implied private right of action for
10 violation of such directives, and the Court finds none.

11 Plaintiff appears to reference the Elder Abuse and Dependent Adult Civil
12 Protection Act ("Act"). See Cal. Welf. & Inst. Code §§ 15600 et seq. The Act provides for
13 liability for physical abuse or neglect where the defendant acted with recklessness,
14 oppression, fraud or malice in the commission of the abuse. See Cal. Welf. & Inst. Code
15 § 15657. Plaintiff fails to demonstrate applicability of the Act. He does not allege facts
16 that he is an "elder" or "dependent adult", see Cal. Welf. & Inst. Code §§ 15610.23,
17 15610.27; that he suffered physical or mental harm or was deprived of necessities to
18 avoid such harm, see Cal. Welf. & Inst. Code § 15610.07; and that he has standing to
19 enforce the Act, see Cal. Welf. & Inst. Code §§ 15600(i)(j), 15656 15657-15657.8.
20 Plaintiff's conclusory allegations fail to allege a violation of the Act and therefore fail to
21 state a claim.

22 **V. CONCLUSION AND ORDER**

23 Plaintiff's Complaint does not state a claim for relief. The Court will grant Plaintiff
24 an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d 1446, 1448-49
25 (9th Cir. 1987). If Plaintiff opts to amend, he must demonstrate that the alleged acts
26 resulted in a deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff
27 must set forth "sufficient factual matter . . . to 'state a claim that is plausible on its face.'"
28

1 Id. at 678 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also demonstrate
2 that each named Defendant personally participated in a deprivation of his rights. Jones
3 v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

4 Plaintiff should note that although he has been given the opportunity to amend, it
5 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th
6 Cir. 2007). Plaintiff should carefully read this Screening Order and focus his efforts on
7 curing the deficiencies set forth above.

8 Finally, Plaintiff is advised that Local Rule 220 requires that an amended
9 complaint be complete in itself without reference to any prior pleading. As a general rule,
10 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d
11 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no
12 longer serves any function in the case. Therefore, in an amended complaint, as in an
13 original complaint, each claim and the involvement of each defendant must be
14 sufficiently alleged. The amended complaint should be clearly and boldly titled "First
15 Amended Complaint," refer to the appropriate case number, and be an original signed
16 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.
17 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a
18 right to relief above the speculative level" Twombly, 550 U.S. at 555 (citations
19 omitted).

20 Accordingly, it is HEREBY ORDERED that:

- 21 1. The Clerk's Office shall send Plaintiff (1) a blank civil rights complaint form and
22 (2) a copy of his complaint, filed October 22, 2014;
- 23 2. Plaintiff's complaint (ECF No. 1) is dismissed for failure to state a claim upon
24 which relief may be granted;
- 25 3. Plaintiff shall file an amended complaint within thirty (30) days; and if Plaintiff
26 fails to file an amended complaint in compliance with this order, the Court will
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

dismiss this action, with prejudice, for failure to state a claim and failure to
comply with a court order.

IT IS SO ORDERED.

Dated: April 29, 2015

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE