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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 **DAVID TOWNSEL,**

10 **Plaintiff,**

11 **v.**

12 **MADERA COUNTY DEPT PROBATION,**  
13 **et al.,**

14 **Defendants.**

**Case No. 1:15-cv-00763-LJO-SAB**

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS**

**(ECF No. 6)**

**THIRTY-DAY DEADLINE**

15 Plaintiff filed the complaint in this action on May 19, 2015. (ECF No. 1.) The action  
16 was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local  
17 Rule 302. On July 2, 2015, this Court entered an order consolidating Townsel v. Madera County  
18 Behavioral Health Services, No. 1:15-cv-00764-AWI-GSA, with this action. (ECF No. 4). This  
19 Order addresses both the complaint filed in Case No. 1:15-cv-00763 LJO SAB and the complaint  
20 filed in Case No. 1:15-cv-00764 AWI GSA.  
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22 **1. F&Rs Recommending Dismissal of Certain Claims in Original Complaint filed in**  
23 **Case No. 1:15-cv-00763 LJO SAB.**

24 On May 27, 2015, the Magistrate Judge filed Findings and Recommendations (“F&Rs”)  
25 recommending dismissal of certain claims and providing Plaintiff with an opportunity to file an  
26 amended complaint. The F&Rs were served on Plaintiff and contained notice that any objections  
27 to the F&Rs were to be filed within thirty days (30) days from the date of service. The period for  
28 filing objections has now passed and no objections have been filed.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
2 a de novo review of the case. Having carefully reviewed the entire file, the Court finds the F&Rs  
3 to be supported by the record and by proper analysis. The original complaint filed in Case No.  
4 1:15-cv-00763 LJO SAB is therefore **DISMISSED WITH LEAVE TO AMEND AS TO THE**  
5 **EIGHTH AMENDMENT AND DOUBLE JEOPARDY CLAIMS, BUT WITHOUT LEAVE**  
6 **TO AMEND AS TO HIS CLAIM CONCERNING POST RELEASE SUPERVISION.**

7 **2. Complaint filed in Case No. No. 1:15-cv-00764-AWI-GSA.**

8 As mentioned above, on July 2, 2015, this Court entered an order consolidating Townsel  
9 v. Madera County Behavioral Health Services, No. 1:15-cv-00764-AWI-GSA, with this action.  
10 (ECF No. 4.) Accordingly, this Court now has jurisdiction to address the Complaint filed in Case  
11 No. 1:15-cv-00764-AWI-GSA.

12 Pursuant to 28 U.S.C. § 1915(e)(2), the Court must dismiss a case if at any time the Court  
13 determines that the complaint fails to state a claim upon which relief may be granted. In  
14 determining whether a complaint fails to state a claim, the Court uses the same pleading standard  
15 used under Federal Rule of Civil Procedure 8(a). A complaint must contain “a short and plain  
16 statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2).  
17 Accordingly, the Court shall screen the complaint filed in the consolidated case.

18 Plaintiff brings the action against Mark L. Duarte alleging a violation of the Eighth  
19 Amendment because Mr. Duarte stated that Plaintiff had unstable psychotic markers due to not  
20 being on his psychiatric medications from June through August of 2013. Townsel v. Madera  
21 County Behavioral Health Services, No. 1:15-cv-00764-AWI-GSA, ECF No. 1. Plaintiff’s  
22 probation officer reported that Plaintiff had not reported to the Probation Department during this  
23 same period, was not attending his mental health counseling, his whereabouts were unknown and  
24 Plaintiff was a danger to the community. Plaintiff was referred for a violation of probation on  
25 August 28, 2013. On November 18, 2013, Plaintiff was seen by the Madera County Department  
26 of Corrections Mental Health Nurse who reported that Plaintiff requested no psychiatric  
27 medication for his schizophrenia, and found that he was not suicidal and no psychotic markers  
28 were reported.

1 The Eighth Amendment protects prisoners from inhumane methods of punishment and  
2 from inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir.  
3 2006). To constitute cruel and unusual punishment in violation of the Eighth Amendment,  
4 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman,  
5 452 U.S. 337, 347 (1981). Plaintiff fails to allege any facts from which the Court can infer that  
6 Mr. Duarte violated the Eighth Amendment by reporting his psychiatric findings regarding  
7 Plaintiff. Plaintiff fails to state a claim against Mr. Duarte and the complaint filed originally in  
8 Case No. No. 1:15-cv-00764-AWI-GSA is **DISMISSED WITH LEAVE TO AMEND**.

9 **3. Leave to Amend.**

10 Plaintiff shall file a single amended complaint raising claims he originally raised in the  
11 two separate complaints addressed above. Plaintiff is advised that his amended complaint must  
12 include sufficient factual allegations against each named defendant to link the individual  
13 defendant to the acts or failures to act that he asserts violated his federal rights. “[A] complaint  
14 must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible  
15 on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). A complaint stops short of the line  
16 between probability and the possibility of relief where the facts pled are merely consistent with a  
17 defendant’s liability. Id. “[W]here the well-pleaded facts do not permit the court to infer more  
18 than the mere possibility of misconduct,” the complaint has not shown that the plaintiff is  
19 entitled to relief. Id.

20 Further, while the court is to accept all “well pleaded factual allegations” in the complaint  
21 as true, Iqbal, 556 U.S. at 679, it is not bound to accept as true labels, conclusions, formulaic  
22 recitations of the elements of a cause of action or legal conclusions couched as factual  
23 allegations, Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). In his amended  
24 complaint Plaintiff must include sufficient factual content for the court to draw the reasonable  
25 inference that the defendant is liable for the alleged misconduct. Iqbal, 556 U.S. at 678.

26 In his amended complaint, Plaintiff shall state as briefly as possible the facts of his case,  
27 describing how each defendant is involved. Plaintiff shall separate his claims, so that it is clear  
28 what his claims are and who the defendants involved are. Further, for each claim, Plaintiff shall

1 clearly and succinctly set forth the facts to state the acts or failure to act by each Defendant that  
2 led to a knowing violation of Plaintiff's federal rights.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. With regard to the complaint filed in Case No. 1:15-cv-00763-LJO-SAB (ECF  
5 No. 1, filed May 19, 2015)

6 A. The F&Rs filed May 27, 2015 are **ADOPTED IN FULL;**

7 B. Plaintiff's claim that he has been sentenced to a period of post release  
8 supervision is **DISMISSED WITHOUT LEAVE TO AMEND;**

9 C. Plaintiff's Eighth Amendment and double jeopardy claims are  
10 **DISMISSED WITH LEAVE TO AMEND.**

11 2. With regard to the Complaint filed originally in Case No. 1:15-cv-00764-AWI-  
12 GSA, ECF No. 1 (filed May 19, 2015), Plaintiff's claims are **DISMISSED**  
13 **WITH LEAVE TO AMEND.**

14 4. Within thirty (30) days from the date of service of this order, Plaintiff shall file a  
15 single amended complaint addressing any claims for which leave to amend has  
16 been granted. Any such complaint should be filed in case no. 1:15-cv-00763-LJO-  
17 SAB ONLY.

18 6. Failure to file an amended complaint in compliance with this order will result in  
19 this action being dismissed for failure to state a claim.

20  
21 IT IS SO ORDERED.

22 Dated: July 8, 2015

/s/ Lawrence J. O'Neill  
23 UNITED STATES DISTRICT JUDGE  
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