

EARL SIMPSON,)	Case No.: 1:15-cv-01301-BAM (PC)
)	
Plaintiff,)	SCREENING ORDER DISMISSING ACTION FOR
)	FAILURE TO STATE A CLAIM UPON WHICH
v.)	RELIEF MAY BE GRANTED, WITH LEAVE TO
)	AMEND
PAM AHLIN,)	
)	
Defendants.)	(ECF No. 1)
)	
)	THIRTY (30) DAY DEADLINE
)	
)	
)	

Plaintiff Earl Simpson (“Plaintiff”) is a state civil detainee proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff’s complaint, filed August 20, 2015, is currently before the Court for screening. (ECF No. 1.)

I. Screening Requirement and Standard

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. § 1915(e)(2)(B)(ii).

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009) (citing Bell
5 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65 (2007)). While a plaintiff’s
6 allegations are taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v.
7 Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
8 omitted).

9 Prisoners proceeding pro se in civil rights actions are entitled to have their pleadings liberally
10 construed and to have any doubt resolved in their favor. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir.
11 2010) (citations omitted). To survive screening, Plaintiff’s claims must be facially plausible, which
12 requires sufficient factual detail to allow the Court to reasonably infer that each named defendant is
13 liable for the misconduct alleged, Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949 (quotation marks omitted);
14 Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a
15 defendant acted unlawfully is not sufficient, and mere consistency with liability falls short of
16 satisfying the plausibility standard. Iqbal, 556 U.S. at 678, 129 S. Ct. at 1949 (quotation marks
17 omitted); Moss, 572 F.3d at 969.

18 **II. Plaintiff’s Allegations**

19 Plaintiff is currently housed at Coalinga State Hospital. Plaintiff names Pam Ahlin, the CEO of
20 the Department of Hospitals, as the sole defendant. Plaintiff filed this action using this Court’s
21 standardized complaint form for a §1983 action. Attached to the complaint is a document entitled
22 “Petition for Writ of Mandamus and Prohibition.”

23 Plaintiff alleges as follows: On October 10, 2005, he was involuntarily transferred to the State
24 Hospital pursuant to Cal. Penal Code §§2962-2972 as a civilly committed person. Plaintiff’s
25 allegations, in his document entitled “Petition for Writ of Mandamus and Prohibition,” are confusing.
26 He claims there are fraud and “sienter” and estoppel at the Hospital. But as best the Court can
27 determine, Plaintiff is claiming that he was supposed to be released on parole on October 10, 2005 but
28 instead he was transferred to the state hospital for treatment. He alleges he is being held “into the

1 custody of the hospitals for unnecessary treatment.” (Doc. 1, p.5 of 7.) He asks to be released. The
2 remainder of the “Petition” asks for the Court to subpoena documents and records from the
3 Department of State Hospitals.

4 **III. Deficiencies of Complaint**

5 **Habeas Corpus**

6 Plaintiff is informed that insofar as he is challenging the validity of his continued commitment,
7 the exclusive method for asserting that challenge is by filing a petition for a writ of habeas corpus.
8 Wilkinson v. Dotson, 544 U.S. 74, 78 (2005). See 28 U.S.C. § 2254(a). Such claims may not be
9 brought in a section 1983 action. Nor may Plaintiff seek to invalidate the fact or duration of his
10 confinement indirectly through a judicial determination that necessarily implies the unlawfulness of
11 the State's custody. Wilkinson, 544 U.S. at 81. A section 1983 action is barred, no matter the relief
12 sought, if success in that action would necessarily demonstrate the invalidity of confinement or its
13 duration. *Id.* at 81–82; Heck v. Humphrey, 512 U.S. 477, 489 (1994) (unless and until favorable
14 termination of the conviction or sentence, no cause of action under section 1983 exists); Huftile v.
15 Miccio-Fonseca, 410 F.3d 1136, 1140 (9th Cir. 2005) (applying Heck to SVPA detainees with access
16 to habeas relief). Thus, when a prisoner challenges the legality of his custody and the relief he seeks is
17 a determination that he is entitled to an earlier or immediate release, such a challenge is not cognizable
18 under 42 U.S.C. § 1983, and the prisoner's sole federal remedy is a petition for a writ of habeas
19 corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also Neal v. Shimoda, 131 F.3d 818,
20 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995) (per curiam). If a
21 § 1983 complaint states claims which sound in habeas, the court should not convert the complaint into
22 a habeas petition. See *id.*; Trimble, 49 F.3d at 586. Rather, such claims must be dismissed without
23 prejudice and the complaint should proceed on any remaining cognizable § 1983 claims. See Heck,
24 512 U.S. at 487; Trimble, 49 F.3d at 585.

25 Plaintiff's claims, either directly or indirectly, challenge the validity of his confinement, a
26 challenge which may be brought only in a petition for a writ of habeas corpus. Thus, Plaintiff has
27 failed to state any claims that are cognizable under section 1983. In an abundance of caution, and in
28 the event the Court has misconstrued the relief Plaintiff is seeking, the Court will permit plaintiff leave

1 to amend his complaint. If, however, Plaintiff in fact seeks to challenge the fact or duration of his
2 confinement, he should file a petition for habeas corpus pursuant to 28 U.S.C. § 2254.¹

3 **Petition for Writ of Habeas Corpus**

4 To the extent that Plaintiff's intent was to file a petition for writ of habeas corpus, Rule 4 of the
5 Rules Governing § 2254 Cases requires the Court to conduct a preliminary review of each petition for
6 writ of habeas corpus. The Court must dismiss a petition "[i]f it plainly appears from the petition ...
7 that the petitioner is not entitled to relief." Rule 4 of the Rules Governing 2254 Cases; see also
8 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir.1990).

9 A petitioner seeking habeas corpus relief under 28 U.S.C. § 2254 must name the state officer
10 having custody of him as the respondent to the petition. Rule 2(a) of the Rules Governing § 2254
11 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891, 894 (9th Cir.1996); Stanley v. California Supreme
12 Court, 21 F.3d 359, 360 (9th Cir.1994). Respondent Pam Ahlin, Executive Director of Coalinga State
13 Hospital, appears to be appropriately named as the officer having custody of Plaintiff, who as a result
14 of his civil commitment is confined to Coalinga State Hospital.

15 In addition, the petition must "be signed under penalty of perjury by the petitioner or by a
16 person authorized to sign if for the petition under 28 U.S.C. § 2242." Rule 2(c)(5) of the Rules
17 Governing 2254 Cases.

18 Finally, the complaint does not include the allegations and information required to file a
19 complete petition for habeas corpus. The Court will order the Clerk to provide Petitioner with a form
20 to be completed to create a complete petition for writ of habeas corpus. Plaintiff is directed to fully
21 complete that petition to include all grounds for relief and facts supporting each such ground. The
22 Court will not refer to the prior complaint if any necessary claims or facts are omitted from the
23 amended petition.

24 **Exhaustion of State Remedies**

25 A petitioner who is in state custody and wishes to collaterally challenge his conviction by a
26 petition for writ of habeas corpus must first exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1).

27 ¹ In a prior proceeding, *Simpson v. King*, CAED Case. 14-1679, reported in 2014 WL 7447780
28 Plaintiff was informed of the standards for a habeas petition.

1 The exhaustion doctrine is based on comity to the state court and gives the state court the initial
2 opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S.
3 722, 731, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991); Rose v. Lundy, 455 U.S. 509, 518, 102 S.Ct. 1198,
4 71 L.Ed.2d 379 (1982); Buffalo v. Sunn, 854 F.2d 1158, 1163 (9th Cir.1988).

5 A petitioner can satisfy the exhaustion requirement by providing the highest state court with a
6 full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v.
7 Henry, 513 U.S. 364, 365, 115 S.Ct. 887, 130 L.Ed.2d 865 (1995); Picard v. Connor, 404 U.S. 270,
8 276, 92 S.Ct. 509, 30 L.Ed.2d 438 (1971); Johnson v. Zenon, 88 F.3d 828, 829 (9th Cir.1996).

9 **IV. Conclusion and Order**

10 Plaintiff's §1983 complaint fails to state a claim upon which relief can be granted. The
11 complaint fails to set forth a factual basis supporting Plaintiff's apparent legal conclusion that his
12 commitment was not warranted. Due to the lack of clarity regarding Plaintiff's current commitment
13 status and relief he seeks, Plaintiff will be given leave to amend. If Plaintiff elects to amend his
14 pleadings, as this order permits him to do, he must set forth his claim(s) completely, including the full
15 factual basis supporting his legal conclusions.

16 If he chooses to proceed under §1983, he must specifically show that habeas relief is not
17 available to him and that success in this action would not necessarily demonstrate the invalidity of his
18 confinement or its duration.

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

- 20 1. The Complaint shall be dismissed with leave to amend for failure to state a cognizable
21 claim.
- 22 2. The Clerk's Office shall send Plaintiff a copy of this order and forms for (1) a Petition
23 under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody, and
24 (2) a Complaint pursuant to the Civil Rights Act, 42 U.S.C. § 1983.
- 25 3. Within **thirty (30) days** of service of this order, Plaintiff shall file amended pleadings
26 consisting of **either** a petition for writ of habeas corpus or a complaint pursuant to the
27 Civil Rights Act, 42 U.S.C. § 1983. Plaintiff shall fully complete the form for the
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1 amended pleadings, including all claims and the facts supporting each claim. Plaintiff
2 shall sign the amended pleadings under penalty of perjury.

- 3 4. **If Plaintiff fails to file an amended complaint in compliance with this order, the**
4 **Court will dismiss this action, with prejudice, for failure to state a claim and to**
5 **obey a court order.**

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7 IT IS SO ORDERED.

8 Dated: September 16, 2016

9 /s/ Barbara A. McAuliffe
10 UNITED STATES MAGISTRATE JUDGE
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