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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PETER GERARD WAHL,
Plaintiff,
v.
WARDEN SUTTON, et al.,
Defendants.

Case No. 1:16-cv-01576-BAM (PC)
**ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN DISTRICT JUDGE**
**FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION FOR
FAILURE TO STATE A CLAIM**
(ECF No. 22)
FOURTEEN-DAY DEADLINE

I. Introduction

Plaintiff Peter Gerard Wahl (“Plaintiff”), a former state prisoner, is proceeding pro se and in forma pauperis in this civil rights action under 42 U.S.C. § 1983. Plaintiff initiated this action on October 19, 2016, while confined at Wasco State Prison. (ECF No. 1.) On February 20, 2018, the Court screened Plaintiff’s second amended complaint and granted him leave to amend. (ECF No. 21.) Plaintiff’s third amended complaint, filed on March 1, 2018, is currently before the Court for screening. (ECF No. 22.)

II. 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. §

1 1915A(a). Plaintiff's complaint, or any portion thereof, is subject to dismissal if it is frivolous or
2 malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary
3 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C.
4 § 1915(e)(2)(B)(ii).

5 A complaint must contain "a short and plain statement of the claim showing that the
6 pleader is entitled to relief. . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
7 required, but "[t]hreadbare recitals of the elements of a cause of action, supported by mere
8 conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937,
9 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65
10 (2007)). While a plaintiff's allegations are taken as true, courts "are not required to indulge
11 unwarranted inferences." *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009)
12 (internal quotation marks and citation omitted).

13 To survive screening, Plaintiff's claims must be facially plausible, which requires
14 sufficient factual detail to allow the Court to reasonably infer that each named defendant is liable
15 for the misconduct alleged. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted);
16 *Moss v. United States Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility
17 that a defendant acted unlawfully is not sufficient, and mere consistency with liability falls short
18 of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks
19 omitted); *Moss*, 572 F.3d at 969.

20 **A. Plaintiff's Allegations**

21 Plaintiff, formerly confined at Wasco State Prison, brings suit against Warden John
22 Sutton. Plaintiff alleges that on August 18, 2016, he was convicted for possession with intent to
23 sell marijuana and sentenced to 16 months in prison. He was transported to Wasco State Prison
24 in September 2016.

25 On November 30, 2016, the sentencing court ordered Plaintiff's sentence reduced to a
26 misdemeanor with time deemed served. Plaintiff received a certified copy of the order with the
27 sentencing court's seal on December 3, 2016. Plaintiff immediately began grievance processes
28 on December 4, 2016, and Defendant Sutton was "grieved as well." (ECF No. 22 at p. 4.)

1 Plaintiff contends that the grievance processing was too slow. He also filed petitions for habeas
2 relief in Kern County Superior Court.

3 Plaintiff has learned, through post-release investigation, that the Clerk of Court did not
4 notify Defendant until 21 days after court-ordered release. Defendant continued to hold Plaintiff
5 as a state prisoner until December 29, 2016. Plaintiff alleges that he suffered severe
6 psychological, emotional and physical distress as a result of his confinement. Plaintiff further
7 alleges that Defendant Sutton knew or reasonably should have known through the prior
8 grievances that Plaintiff was being held unlawfully, but Defendant took no steps to rectify the
9 matter. Plaintiff alleges that Defendant exhibited callous indifference to Plaintiff's grievances.
10 Plaintiff contends that the classification department was overburdened and understaffed during
11 this period.

12 Plaintiff seeks a declaratory judgment, along with damages.

13 **B. Discussion**

14 The crux of Plaintiff's amended complaint is that he was held past his release date.

15 Eighth Amendment

16 A prisoner's claim for damages resulting from excessive custody may support a legitimate
17 section 1983 claim. *See Haygood v. Younger*, 769 F.2d 1350, 1359 (9th Cir. 1985). "Detention
18 beyond the termination of a sentence could constitute cruel and unusual punishment [in violation
19 of the Eighth Amendment] if it is the result of 'deliberate indifference' to the prisoner's liberty
20 interest; otherwise, such detention can be held to be unconstitutional only if it violates due
21 process." *Id.* at 1354 (internal citations omitted).

22 Here, Plaintiff's amended complaint fails to state a cognizable deliberate indifference
23 claim against Defendant Sutton. Plaintiff admits that he was released approximately 8 days after
24 defendants received a copy of the court's order regarding resentencing. There is no indication
25 that prison officials acted with deliberate indifference following receipt of the court order.
26 Plaintiff himself admits that the classification department was overburdened and understaffed.
27 Although Plaintiff alleges that he attempted to notify prison officials via the grievance process,
28 there is no indication that Defendant Sutton knew of the grievances or of the reduced sentence

1 and failed to otherwise act.

2 Due Process

3 “The due process clause of the Fourteenth Amendment protects individuals from unlawful
4 state deprivation.” *Ward v. Brown*, 891 F.Supp.2d 1149, 1163 (E.D. Cal. 2012). In assessing a
5 due process violation related to excessive custody, the “court’s first task is to determine whether
6 *Paratt* (random act) or *Logan* (official practice and procedure) controls.” *Haygood*, 769 F.2d at
7 1359. Random and unauthorized deprivations by state prison officers cannot be prevented by due
8 process hearings,” and “a remedial hearing after the injury can provide due process in a narrowly
9 limited class of cases.” *Id.* at 1357. However, “where the injury is the product of the operation of
10 state law, regulation or institutionalized practice, it is neither random nor unauthorized.” *Id.*

11 Thus,

12 [i]f the wrongful taking of liberty results from either affirmatively enacted or de
13 facto policies, practices or customs, the court must determine when the
14 responsible state officers received notice of a claim that a wrong was being done.
15 When an official with the authority to rectify an erroneous practice receives notice
16 of the wrongful practice and its harmful consequences, due process requires the
state to provide a hearing before a further denial of liberty can be said to be free
from § 1983 liability.

17 *Id.* at 1359. According to exhibits attached to Plaintiff’s amended complaint, it appears that
18 prison officials received a copy of the sentencing court’s order on December 21, 2016 (ECF No.
19 22 at p. 9), and Plaintiff was released from custody on December 29, 2016. There is no allegation
20 that Plaintiff’s failure to be released from immediate custody was due to a policy, practice or
21 custom of the prison. Rather, it appears to be a delay resulting from understaffing, and the not a
22 policy, practice or custom of Defendant Sutton or the prison.

23 **III. Conclusion and Recommendation**

24 Plaintiff’s third amended complaint fails state a cognizable claim for relief. Despite being
25 provided with the relevant pleading and legal standards, Plaintiff has been unable to cure the
26 deficiencies in his complaint, and thus further leave to amend is not warranted. *Lopez v. Smith*,
27 203 F.3d 1122, 1130 (9th Cir. 2000).

28 Accordingly, the Court HEREBY DIRECTS the Clerk of the Court to randomly assign a

1 district judge to this action.

2 Further, the Court HEREBY RECOMMENDS that Plaintiff's complaint be dismissed for
3 failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e).

4 These Findings and Recommendation will be submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen
6 (14) days after being served with these Findings and Recommendation, Plaintiff may file written
7 objections with the Court. The document should be captioned "Objections to Magistrate Judge's
8 Findings and Recommendation." Plaintiff is advised that failure to file objections within the
9 specified time may result in the waiver of the "right to challenge the magistrate's factual
10 findings" on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*
11 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

12
13 IT IS SO ORDERED.

14 Dated: March 29, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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