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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROLAND THOMAS KOCH,  
Plaintiff,  
v.  
IAN YOUNG,  
Defendant.

CASE NO. 1:17-cv-00346-LJO-MJS (PC)  
**FINDINGS AND RECOMMENDATIONS**  
**TO DISMISS CASE FOR FAILURE TO**  
**STATE A CLAIM**  
**AND**  
**TO DENY PLAINTIFF’S REQUEST FOR**  
**APPOINTMENT OF COUNSEL**  
**FOURTEEN DAY OBJECTION DEADLINE**

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. The Court dismissed Plaintiff’s original complaint (ECF No. 1) for failure to state a claim, but gave leave to amend his excessive force claim. (ECF No. 8). Plaintiff was explicitly advised that although he had been granted the opportunity to amend his complaint, it was “not for the purposes of adding new claims.” George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). (Id.) Plaintiff’s first amended complaint (“FAC”) is before the Court for screening. (ECF No. 9.)

1     **I.     Screening Requirement**

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

6     **II.     Pleading Standard**

7             Section 1983 “provides a cause of action for the deprivation of any rights,  
8 privileges, or immunities secured by the Constitution and laws of the United States.”  
9 Wilder v. Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983).  
10 Section 1983 is not itself a source of substantive rights, but merely provides a method for  
11 vindicating federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94  
12 (1989).

13             To state a claim under § 1983, a plaintiff must allege two essential elements:  
14 (1) that a right secured by the Constitution or laws of the United States was violated and  
15 (2) that the alleged violation was committed by a person acting under color of state  
16 law. See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cty., 811 F.2d  
17 1243, 1245 (9th Cir. 1987).

18             A complaint must contain “a short and plain statement of the claim showing that  
19 the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations  
20 are not required, but “[t]hreadbare recitals of the elements of a cause of action,  
21 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.  
22 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).  
23 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief  
24 that is plausible on its face.” Id. Facial plausibility demands more than the mere  
25 possibility that a defendant committed misconduct and, while factual allegations are  
26 accepted as true, legal conclusions are not. Iqbal, at 677-78.

1 **III. Plaintiff's Allegations**

2 Plaintiff is detained at Coalinga State Hospital ("CSH"). He names Unit Supervisor  
3 Ian Young as the sole Defendant. The allegations are summarized here essentially as  
4 they were in the undersigned's initial screening Order (ECF No. 8) and as follows:

5 Defendant Young is "a threat" to Plaintiff. On February 28, 2017, Defendant  
6 Young used "illegal physical force" when he "twisted" Plaintiff's arms behind Plaintiff's  
7 back and transported Plaintiff to a room Plaintiff "did not want to be in." Plaintiff was  
8 sitting on the floor reading a book and told Defendant in a "calm, cool, collected  
9 conversational voice/tone" to call officers if he believed Plaintiff was breaking any rule. A  
10 similar incident involving Defendant occurred on July 26, 2014 (but no details of this  
11 event are provided). Plaintiff's pleading does not describe any injury resulting from his  
12 contacts with Defendant.

13 Plaintiff's current allegations ramble and repeat and expand on the same facts as  
14 in his initial complaint. However, the Court's admonition against adding new claims  
15 notwithstanding, Plaintiff's narrative suggests an intent to broaden his claims to include  
16 unrelated challenges to the institution's procedures for housing assignments, property  
17 protection, stolen/confiscated property recovery, and record keeping. He also suggests  
18 he has in some vague manner been denied access to the courts and been retaliated  
19 against for exercising his First Amendment rights.

20 In his FAC, Plaintiff requests that the Court relocate him to less restrictive  
21 housing, that it assign him an investigator or attorney, and that Defendant Young be  
22 arrested or suspended. .

23 **IV. Discussion**

24 As noted, Plaintiff has further expanded on his core complaint about Defendant  
25 Young using more force than necessary to move Plaintiff. He now includes a long list of  
26 grievances preceding and ensuing after that core event. This enlarged narrative may  
27 harmlessly provide more background about what Plaintiff was doing, why and where he  
28 was doing it, and why and how the response to his actions and complaints were

1 unproductive and disrespectful. But it could also be read as an attempt to bring in new  
2 and unrelated claims and parties. Plaintiff was warned that the opportunity to amend was  
3 “not for the purposes of adding new claims.” (ECF No. 8.) The Court finds all purported  
4 claims extending beyond the excessive force claims in his initial complaint to be  
5 unrelated and will not address them here. If Plaintiff wishes to do so, he may raise  
6 present them in a separate action or actions.

7 **A. Excessive Force**

8 Plaintiff brings a claim for excessive force in violation of the Fourteenth  
9 Amendment. He states that Defendant Young twisted his arms behind his back, pushed  
10 his face and chest, “with undue force,” into a wall, and then pushed him “at” a bed. He  
11 may have done this twice.

12 The pleadings do not reflect the force was excessive. Plaintiff admits that he  
13 continually resisted Defendant Young’s instructions in “protest” against Young and that  
14 the subject force was to gain Plaintiff’s compliance with directives given to Plaintiff.  
15 Significantly, though given an opportunity to correct this deficiency, Plaintiff again fails to  
16 plead he suffered any injury as a result of Defendant Young’s actions. The facts pled,  
17 then, reflect a lawful use of non-excessive force for the purpose of gaining compliance  
18 with directives Plaintiff disagreed with.

19 Plaintiff having failed to correct the deficiencies in his pleading despite being  
20 advised what was necessary to do so, no useful purpose would be served by giving him  
21 the same advice again and yet another opportunity to do that which he has twice failed  
22 to do. Leave to amend should therefore be denied.

23 **B. Preliminary Injunction**

24 Plaintiff asks the Court to assign him an investigator, relocate him to less  
25 restrictive housing (or “RRU”), and either “arrest” or “suspend” Defendant Young.  
26 Although unclear from his FAC, the Court construes this as a request for preliminary  
27 injunctive relief.

28

1 Plaintiff is not entitled to preliminary injunctive relief. As discussed above,  
2 Plaintiff's excessive force claim fails to rise to a cognizable claim. Thus, Plaintiff has not  
3 shown that he is likely to succeed on the merits. Additionally, the Court does not have  
4 jurisdiction to order injunctive relief to direct parties not before the Court to take action.  
5 See Zepeda v. U.S. Immigration and Naturalization Serv., 753 F.2d 719, 727 (9th Cir.  
6 1985) ("A federal court may issue an injunction if it has personal jurisdiction over the  
7 parties and subject matter jurisdiction over the claim; it may not attempt to determine the  
8 rights of persons not before the court.")

9 Accordingly, Plaintiff's request for injunctive relief should be denied with prejudice.

### 10 **C. Appointment of Counsel**

11 With respect to Plaintiff's request for appointment of counsel, Plaintiff does not  
12 have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113  
13 F.3d 1520, 1525 (9th Cir. 1997), and the Court cannot require an attorney to represent  
14 plaintiff pursuant to 28 U.S.C. § 1915(e)(1), Mallard v. United States District Court for the  
15 Southern District of Iowa, 490 U.S. 296, 298 (1989). A court may request the voluntary  
16 assistance of counsel pursuant to § 1915(e)(1) in certain exceptional circumstances.  
17 Rand, 113 F.3d at 1525. However, without a reasonable method of securing and  
18 compensating counsel, the Court will seek volunteer counsel only in the most serious  
19 and exceptional cases. In determining whether "exceptional circumstances exist, the  
20 district court must evaluate both the likelihood of success of the merits [and] the ability of  
21 the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues  
22 involved." Id. (internal quotation marks and citations omitted).

23 The Court does not find the required exceptional circumstances here. Plaintiff's  
24 case is not exceptional, and this Court is faced with similar cases almost daily. As  
25 discussed above, Plaintiff has not demonstrated a likelihood of success on the merits,  
26 and even if his case were to proceed, the Court does not find that Plaintiff cannot  
27 adequately articulate his claims. Id.

28 Plaintiff's request for appointment of counsel should be denied.

1 **V. Conclusion and Recommendations**

2 Plaintiff's FAC does not state a cognizable claim for relief. He previously was  
3 advised of pleading deficiencies and afforded the opportunity to correct them. He failed  
4 to do so. Any further leave to amend reasonably appears futile and should be denied.

5 The undersigned recommends that Plaintiff's requests for injunctive relief and  
6 appointment of counsel be denied, that the action be dismissed with prejudice, that  
7 dismissal count as a strike pursuant to 28 U.S.C. § 1915(g), and that the Clerk of the  
8 Court terminate any and all pending motions and close the case.

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

17  
18 IT IS SO ORDERED.

19 Dated: August 25, 2017

1st Michael J. Seng  
UNITED STATES MAGISTRATE JUDGE

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