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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MANUEL BURRUEL, III,

Plaintiff,

v.

PAM AHLIN, et al.,

Defendants.

CASE NO. 1:18-cv-00103-LJO-MJS (PC)

**ORDER REQUIRING PLAINTIFF TO
RESPOND OR NOTIFY COURT OF
WILLINGNESS TO PROCEED ON
CLAIMS FOUND COGNIZABLE**

(ECF No. 1)

[SVPA CASE]

THIRTY (30) DAY 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.

Plaintiff's complaint (ECF No.1) is before the Court for screening.

I. Screening Requirement

Pursuant to 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the complaint to determine if it states a cognizable claim. The Court must dismiss a complaint or portion thereof if it determines that the action has raised claims that are legally "frivolous or malicious," "fails to state a claim upon which relief may be granted," or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B). "Notwithstanding any filing fee, or any portion thereof, that may have

1 been paid, the court shall dismiss the case at any time if the court determines that . . .
2 the action or appeal . . . fails to state a claim on which relief may be granted." 28 U.S.C.
3 § 1915(e)(2)(B)(ii).

4 **II. Pleading Standard**

5 A complaint must contain "a short and plain statement of the claim showing that
6 the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
7 are not required, but "[t]hreadbare recitals of the elements of a cause of action,
8 supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S.
9 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
10 Plaintiffs must set forth "sufficient factual matter, accepted as true, to state a claim to
11 relief that is plausible on its face." Iqbal, 556 U.S. at 678. Facial plausibility demands
12 more than the mere possibility that a defendant committed misconduct and, while factual
13 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 677-78.

14 Section 1983 "provides a cause of action for the deprivation of any rights,
15 privileges, or immunities secured by the Constitution and laws of the United States."
16 Wilder v. Virginia Hosp. Ass'n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). To
17 state a claim under §1983, a plaintiff must allege two essential elements: (1) that a right
18 secured by the Constitution or laws of the United States was violated and (2) that the
19 alleged violation was committed by a person acting under the color of state law. See
20 West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243, 1245
21 (9th Cir. 1987).

22 Under section 1983 the Plaintiff must demonstrate that each defendant personally
23 participated in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
24 2002). This requires the presentation of factual allegations sufficient to state a plausible
25 claim for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962,
26 969 (9th Cir. 2009). Prisoners proceeding pro se in civil rights actions are entitled to
27 have their pleadings liberally construed and to have any doubt resolved in their favor,
28

1 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (citations omitted), but nevertheless,
2 the mere possibility of misconduct falls short of meeting the plausibility standard, Iqbal,
3 556 U.S. at 678; Moss, 572 F.3d at 969.

4 **III. Facts and Allegations**

5 **A. Plaintiff's Claims**

6 Plaintiff is currently detained at Coalinga State Hospital ("Coalinga") and
7 complains of acts that occurred there. He names as Defendants (1) Pam Ahlin, Director
8 of California Department of State Hospitals ("DSH"); (2) Brandon Price, Executive
9 Director of Coalinga; and (3) Jack Carter, Chief, Department of Police Services at
10 Coalinga.

11 Plaintiff's allegations can be fairly summarized as follows:

12 Plaintiff has been detained at Coalinga for nine years under California's Sexually
13 Violent Predator Act ("SVPA").

14 On December 22, 2017, Defendant Ahlin submitted emergency changes to Cal.
15 Code Regs. tit. 9, § 4350 (hereinafter Regulation 4350) that prohibited nearly all
16 electronic devices with memory storage, devices capable of connecting to the internet or
17 to other devices, and devices capable of copying or recording information. These
18 changes were promulgated because individuals housed at Coalinga had been
19 prosecuted for the possession and distribution of child pornography. This amendment
20 became operational on January 12, 2018.

21 Plaintiff uses electronic devices to store music, movies, personal items, and legal
22 materials. Plaintiff has scanned thousands of irreplaceable legal documents, family
23 photographs, and other personal items. Plaintiff has invested thousand dollars on
24 approved electronics and data storage devices.

25 Plaintiff has done nothing wrong and should not be punished for the actions for
26 others. Plaintiff has not engaged in the use, copying, or distribution of child pornography.

1 Plaintiff has not violated any hospital policies or laws relating to ownership of his
2 electronic devices.

3 Defendant Carter has a responsibility to uphold the Constitution and the
4 Constitution prohibits him from engaging in unreasonable seizures. Seizing patients'
5 devices is unreasonable.

6 Plaintiff brings claims under the Fifth, Fourth, and Fourteenth Amendments. He
7 seeks declarative and injunctive relief.

8 **B. Notice of Emergency Amendments and Finding of Emergency**

9 The Court may on its own take judicial notice of information that is not subject to
10 reasonable dispute. Fed. R. Evid. R 201 (b),(c); U.S. v. 14.02 Acres of Land More or
11 Less in Fresno Cnty., 547 F.3d 943, 955 (9th Cir. 2008) ("Judicial notice is appropriate
12 for records and reports of administrative bodies."); see also Lee v. City of Los Angeles,
13 250 F.3d 668, 689 (9th Cir. 2001). The Court therefore takes judicial notice of Notice of
14 Emergency Amendments and Finding of Emergency provided by DSH.¹ This document
15 outlines the facts and reasoning DSH relied upon in making its determination that there
16 was a need for emergency amendment of Regulation 4350. As such, the document is
17 relevant in determining whether Plaintiff's allegations state a claim. It is summarized
18 here:

19 The Notice recites a need to control not just access to the internet and certain
20 electronic devices, but data storage at state hospitals. Digital data storage and
21 communication has allowed patients to access, exchange and/or profit from illegal
22 material, including child pornography.

23 DSH has been working with the Fresno County District Attorney's office to
24 investigate and prosecute child pornography cases. In 2017, DSH made eleven arrests
25 in regards to child pornography. There have been five convictions of patients on charges
26

27 ¹ The Department of State Hospitals' Notice of Emergency Amendments and Finding of Emergency for
28 Emergency Regulations for Electronic Patient Property, dated December 22, 2017, located on the public
web site of <http://www.dsh.ca.gov/Publications/Regulations.aspx>

1 relating to child pornography and several more are awaiting trial. DSH has found that
2 nearly all of the child pornography is being distributed through various electronic
3 devices.

4 Memory devices, even small devices, have the capability to store and copy digital
5 information; and many electronic devices, even devices thought to be disconnected from
6 the internet, allow for access to the internet.

7 DSH further notes that:

8 [A]ccess to the internet provides full access to illegal materials, aerial views of
9 DSH facilities, communication with victims, communication to create additional
10 victims, and the ability to download illicit images for sale or sharing with other
11 patients. However because the ability is in software format within currently
12 authorized memory devices, it is not detectible as contraband through standard
13 room searches. Penal Code section 1546.1, adopted in 2015, mandates that a
14 search of electronic devices is not permitted without permission by the possessor
15 or a search warrant further frustrating the ability to enforce facility and public
16 safety. . . This internet access creates danger for the public, the staff, and
17 patients, as well as interferes with treatment by creating exposures, triggers,
18 and temptations that are intended to be controlled in a secured inpatient mental
19 health setting.

20 Gaming devices that access the internet are currently prohibited and those
21 without internet access are allowed. However, many recent gaming devices contain data
22 storage capabilities, permitting patients to download illegal material to the device and
23 then prevent the illegal material from being discovered in a standard room search. These
24 gaming devices also allow for copyright violations. Therefore, the amendment would
25 prohibit possession of gaming devices with accessible data and the ability to play non-
26 proprietary inserts.

27 The ability to burn DVDs and CDs allows for the distribution of illegal images, as
28 well as copyright infringements. This poses enforcement challenges as DSH does not
have the staff needed to get warrants and to review disks to determine what material is
appropriate. Therefore the amendment would ban all CD/DVD burners and blank disks,
but allows some ownership of CDs and DVDs provided by a manufacturer.

1 DSH acknowledges that child pornography and other illegal materials exist within
2 hospitals, but without the proposed amendment, it cannot address and remove them.

3 **IV. Analysis**

4 **A. Capacity Issues**

5 Plaintiff brings these suits against Defendants in their official and individual
6 capacities.

7 **1. Official Capacity Claims**

8 Plaintiff properly seeks only injunctive and declaratory relief for claims against
9 Defendants in their official capacities. See Aholelei v. Dept. of Pub. Safety, 488 F.3d
10 1144, 1147 (9th Cir. 2007); Wolfson v. Brammer, 616 F.3d 1045, 1065-66 (9th Cir.
11 2010). A plaintiff pursuing claims against defendants in their official capacities must
12 demonstrate that a policy or custom of the governmental entity of which the official is an
13 agent was the moving force behind the violation. See Hafer v. Melo, 502 U.S. 21, 25
14 (1991); Kentucky v. Graham, 473 U.S. 159, 166 (1985). That is, the plaintiff must
15 establish an affirmative causal link between the policy at issue and the alleged
16 constitutional violation. See City of Canton, Ohio v. Harris, 489 U.S. 378, 385, 391-92
17 (1989); Van Ort v. Estate of Stanewich, 92 F.3d 831, 835 (9th Cir. 1996). Furthermore,
18 “[a] plaintiff seeking injunctive relief against the State is not required to allege a named
19 official’s personal involvement in the acts or omissions constituting the alleged
20 constitutional violation.” Hartmann v. California Dep’t of Corr. & Rehab., 707 F.3d 1114,
21 1127 (9th Cir. 2013) (citing Hafer, 502 U.S. at 25.) “Rather, a plaintiff need only identify
22 the law or policy challenged as a constitutional violation and name the official within the
23 entity who can appropriately respond to injunctive relief.” Id. (citing Los Angeles County
24 v. Humphries, 562 U.S. 29, 35-36 (2010)).

25 Here Plaintiff alleges that current and proposed DSH policies unconstitutionally
26 prohibit him and other patients from owning certain electronic devices and accessing the
27 internet and force him to dispose of his validly accumulated electronic material. He seeks

1 modification of these policies. Pam Ahlin, as the Director of DSH, Brandon Price, as the
2 Director of Coalinga, and Jack Carter as the Chief of Police at Coalinga, appear to be
3 appropriate defendants to respond to Plaintiff's requests. Therefore, if and to the extent
4 Plaintiff's claims are found to be cognizable, Plaintiff may proceed with his suit against
5 Defendants in their official capacities.

6 **2. Individual Capacity Claims**

7 Plaintiff also brings claims against Defendants in their individual capacities.

8 Under § 1983, the plaintiff must demonstrate that each named defendant
9 personally participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-77
10 Simmons v. Navajo County, 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of
11 Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009). Liability may not be imposed on
12 supervisory personnel under the theory of *respondeat superior*. Iqbal, 556 U.S. at 676-
13 77. Supervisory personnel may only be held liable if they "participated in or directed the
14 violations, or knew of the violations and failed to act to prevent them," Taylor v. List, 880
15 F.2d 1040, 1045 (9th Cir. 1989) accord Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir.
16 2011), *cert. denied*, 132 S.Ct. 2101 (2012).

17 Here, Plaintiff does not allege facts that any Defendant individually acted to
18 deprive him of his rights. From Plaintiff's complaint it does not appear that Defendants
19 individually participated in any violation of his rights. Thus, Plaintiff's claims against
20 Defendants in their individual capacities are not cognizable as pled. Plaintiff will be given
21 leave to amend.

22 **B. Substantive Due Process Issues**

23 Plaintiff claims that the conditions of his confinement violate his Fourteenth
24 Amendment right to substantive due process.

25 The Fourteenth Amendment substantive due process clause provides the
26 standard for evaluating the constitutionally protected interests of individuals who have
27 been involuntarily committed to a state facility. Youngberg v. Romeo, 457 U.S. 307, 322-

1 323 (1982); Jones v. Blanas, 393 F.3d 918, 931-32 (9th Cir.2004). Civilly committed
2 persons have a substantive due process right to be free from restrictions that amount to
3 punishment. United States v. Salerno, 481 U.S. 739, 746-47 (1987); Bell v. Wolfish, 441
4 U.S. 520, 535 (1979).

5 The Fourteenth Amendment requires the government to do more than provide the
6 "minimal civilized measure of life's necessities." Rhodes v. Chapman, 452 U.S. 337, 347
7 (1981). Rather, "due process requires that the nature and duration of commitment bear
8 some reasonable relation to the purpose for which the individual is committed." Jackson
9 v. Indiana, 406 U.S. 715, 738 (1972). "[T]he Fourteenth Amendment Due Process
10 Clause requires states to provide civilly-committed persons with access to mental health
11 treatment that gives them a realistic opportunity to be cured and released." Sharp v.
12 Weston, 233 F.3d 1166, 1172 (9th Cir. 2000) (citing Ohlinger v. Watson, 652 F.2d 775,
13 778 (9th Cir. 1980)).

14 An SVPA detainee is entitled to more considerate treatment than criminally
15 detained individuals, and when a SVPA detainee is confined in conditions identical to,
16 similar to, or more restrictive than those applied to individuals detained under criminal
17 codes, it is presumed that the detainee is being subjected to punishment. Jones, 393
18 F.3d at 932 (referencing Sharp, 233 F.3d at 1172-73). The SVPA "generally requires a
19 careful balancing of the rights of individuals who are detained for treatment, not
20 punishment, against the state's interests in institutional security and the safety of those
21 housed at the facility." Hydrick v. Hunter, 500 F.3d 978, 990 (9th Cir. 2007), *vacated on*
22 *other grounds by* Hunter v. Hydrick, 556 U.S. 1256 (2009).

23 Here, Plaintiff claims that the limitations on his possession of electronic devices
24 and media storage are inherently punitive in nature. Plaintiff alleges that these
25 restrictions are unnecessarily broad and amount to punishment because he is being
26 denied access to information and devices which could facilitate his treatment.

1 risk. Plaintiff also indicates that the regulations would compel him to destroy thousands
2 of irreplaceable digital files, including photographs and legal files.

3 These claims will be addressed in turn below.

4 **1) Prohibition on Electronic Devices and Storage**

5 Examples include gaming devices or MP3 players which cannot connect to the
6 internet and digital recorders that copy television shows.

7 It is not clear from the text of Regulation 4350 whether a gaming device, media
8 player or digital recorder that cannot connect to the internet would be prohibited under
9 the regulations. Regulation 4350 provides that “electronic devices with the capability to
10 connect to a wired . . . and/or a wireless . . . communications network to send and/or
11 receive information” are to be prohibited. Cal. Code Regs. tit. 9, § 4350(a). This includes,
12 “Gaming devices with digital memory storage ability, the ability to access the internet, or
13 the ability to play games or other media not specifically designed for the device,” Cal.
14 Code Regs. tit. 9, § 4350(a)(4)(E); and “[d]igital media recording devices, including but
15 not limited to CD, DVD, Blu-Ray burners,” Cal. Code Regs. tit. 9, § 4350(a)(2).
16 Regulation 4350 further states, “Electronic items patients are permitted include: (1)
17 One television or computer monitor (1) DVD, Blu-ray, or similar player; one (1) CD
18 player; and one (1) radio or music player Tablets or other devices designed for
19 confined individuals through authorized vendors.” Cal. Code Regs. tit. 9, § 4350(b)(1,3).

20 The devices as described by Plaintiff cannot connect to the internet or store
21 electronic data from other sources. Therefore, a plain reading of the regulatory text
22 suggests they would not be banned under Regulation 4350’s prohibition against
23 electronic devices that can send or receive information. See Cal. Code Regs. tit. 9, §
24 4350 (a). However, these particular devices are not included on the list of items that are
25 explicitly allowed. See Cal. Code Regs. tit. 9, § 4350 (b).

26 Because Plaintiff is proceeding pro se, his complaint is to be construed liberally.
27 Hebbe, 627 F.3d at 342. Construing the facts in favor of Plaintiff, allegations that these

1 devices would be banned is sufficient to state a claim. Prohibiting devices that are
2 unable to connect to the internet and unable to store electronic data may be beyond the
3 scope of the legitimate government interest and thus “excessive in relation to the
4 alternative purpose.” Jones, 393 F.3d at 932. Therein lies a cognizable claim.

5 **2) Scanned Digital Documents**

6 Plaintiff alleges that Regulation 4350 will require him to destroy thousands of
7 digital files that are irreplaceable, including confidential legal material and personal
8 photos.

9 Regulation 4350 provides that:

10 patients who are currently in personal possession of . . . any of the contraband
11 items . . . may grant permission to the Department for the item to be reviewed for
12 illegal material If consent is granted by the patient and there is no illegal
13 material found on the contraband items set forth in subsection (a), the item shall
14 be mailed to a location designated by the patient. If consent is not granted by the
15 patient to search the contraband items set forth in subsection (a), the hospital
16 shall destroy the contraband item.

17 Cal. Code Regs. tit. 9, § 4350(e).

18 Regulation 4350 does give individual hospitals the discretion to permit onsite
19 storage of legal and therapeutic material in digital format and to allow inmates
20 supervised access to such material. Cal. Code Regs. tit. 9, § 4350(d). However, there is
21 no indication that Coalinga has or will exercise that discretion in that way. If it does not,
22 Plaintiff must ship all his stored digital data to a third party or have it destroyed.

23 In the Notice of Emergency Amendments, DSH justifies the regulation and its
24 procedure by noting: It lacks the manpower to review each copied disk for contraband
25 on an ongoing basis. Even if an item were initially searched and found lacking in
26 contraband, there is nothing to prevent a patient from later copying illicit material on to it.
27 DSH would not be able to search the disk without probable cause. DSH does not have
28 the resources to enable it to seek and secure search warrants with sufficient regularity to
prevent the abuse it has experienced to date. In short, any onsite unsupervised storage
of digital documents would allow for the potential presence of digital contraband not

1 capable of being found in a standard room search. The restriction is reasonably related
2 to the legitimate government interest of preventing patients from storing illicit digital
3 material and preventing the very abuses which have recently been uncovered.

4 The Court has grave concerns about the potentially devastating effect of forcing
5 an detainee to put all of his legal materials in the hands of a third party or see them
6 destroyed.² The regulatory procedure essentially presumes each detainee has a reliable,
7 technologically adept, third party willing to assume the time, trouble, potential expense,
8 and responsibility of faithfully maintaining, retrieving and providing to the detainee hard
9 copies of items in the detainee's legal files on request. In practice, however, the
10 availability of such a person is unlikely, if not nonexistent. Forfeiture of all of one's legal
11 documents would be a very high price to pay for the inability to find such a person. But
12 even if a proper custodian were located, the Court can anticipate that the difficulties
13 and pitfalls of such a retrieval system would doom it to failure. At best each detainee
14 would have to recall what he had stored and where it was stored and specifically request
15 it and then await its retrieval and delivery via hard copy to him. Absent such specificity in
16 memory and request, the third party would have to conduct a search by topic or
17 procedural issue, a challenging and questionably successful undertaking for a person
18 without legal training. Such procedures and the associated pitfalls pose a very real risk
19 of significantly impeding one's access to the Courts, perhaps even frustrating it
20 completely. Of course, the alternative of destroying one's complete legal files
21 (accumulated electronically at the direction of DSH) could, and likely would, do
22 irreparable damage to one's pursuit of legal relief.

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25 ² By "legal materials," "legal files," and "legal documents," the Court assumes that Plaintiff refers to all
26 pleadings and other papers relating to his detention or prior incarceration, challenges to it, and other
27 constitutional challenges to his plight. *Cf. Lewis v. Casey*, 518 U.S. 343, 354 (1996) (limiting the availability
28 of access to courts claims to direct criminal appeals, habeas petitions, and civil rights actions). The Court's
above-expressed concern about depriving a detainee of such materials does not extend to personal
photographs. While perhaps third party maintenance or even destruction of photos is unfortunate, it does
not create the threat to detainees' valuable Constitutional rights.

1 No. 1:15-cv-00438 SKO (PC), 2017 U.S. Dist. LEXIS 5027 (E.D. Cal. Jan. 11, 2017);
2 Cerniglia v. Price, No. 117CV00753AWIJLTPC, 2017 WL 4865452 (E.D. Cal. Oct. 27,
3 2017); Allen v. King, No. 1:06-cv-01801-BLW-LMB, 2016 U.S. Dist. LEXIS 108748 (E.D.
4 Cal. Aug. 16, 2016); Smith v. Ahlin, No. 1:16-cv-00138-SKO (PC), 2016 U.S. Dist. LEXIS
5 141587 (E.D. Cal. Oct. 12, 2016); Johnson v. Knapp, No. CV 02-9262-DSF (P JW), 2008
6 U.S. Dist. LEXIS 125001, at *14 (C.D. Cal. Dec. 17, 2008); Johnson v. Witter, No. 3:13-
7 cv-00689-MMD-VPC, 2015 U.S. Dist. LEXIS 41941, at *8-9 (D. Nev. Mar. 31, 2015).

8 The Due Process Clause protects prisoners from being deprived of property
9 without due process of law, Wolff v. McDonnell, 418 U.S. 539, 556, 94 S. Ct. 2963, 41 L.
10 Ed. 2d 935 (1974), and prisoners have a protected interest in their personal property.
11 Hansen v. May, 502 F.2d 728, 730 (9th Cir. 1974). An authorized, intentional deprivation
12 of property is actionable under the Due Process Clause. See Hudson v. Palmer, 468
13 U.S. 517, 532, n.13 (1984) (citing Logan v. Zimmerman Brush Co., 455 U.S. 422, 102 S.
14 Ct. 1148, 71 L. Ed. 2d 265 (1982)); Quick v. Jones, 754 F.2d 1521, 1524 (9th Cir. 1985).
15 An authorized deprivation is one carried out pursuant to established state procedures,
16 regulations, or statutes. Logan, 455 U.S. at 436; Piatt v. MacDougall, 773 F.2d 1032,
17 1036 (9th Cir. 1985) see also Knudson v. City of Ellensburg, 832 F.2d 1142, 1149 (9th
18 Cir.1987). Authorized deprivations of property are permissible if carried out pursuant to
19 a regulation that is reasonably related to a legitimate penological interest. Turner v.
20 Safley, 482 U.S. 78, 89 (1987).

21 To have a property interest, Plaintiff must demonstrate "more than an abstract
22 need or desire for it. ... He must, instead, have a legitimate claim of entitlement to it"
23 under state or federal law. Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

24 The question presented is whether a civil detainee has a property right to items in
25 his possession that were once, but no longer, authorized, where Plaintiff is allowed to
26 transfer those items to a third party of his choosing outside the institution. The Ninth
27 Circuit has not yet reached this issue. However other courts have found that "while an

1 inmate's ownership of property is a protected property interest that may not be infringed
2 upon without due process, there is a difference between the right to own property and
3 the right to possess property while in prison." Searcy v. Simmons, 299 F.3d 1220, 1229
4 (10th Cir. 2002) (quoting Hatten v. White, 275 F.3d 1208, 1210 (10th Cir. 2002)). Thus,
5 courts have found that when property policies are revised to prohibit items but inmates
6 and detainees are allowed to store the items outside of the institution, no property
7 interest is implicated and no process is due. See e.g., Graham v. Sharp, Civil Action No.
8 10-5563 (SRC), 2011 U.S. Dist. LEXIS 66675, at *45 (finding no constitutionally-
9 recognized property interest for civil detainees in the continued ownership of previously
10 authorized electronic devices in the face of newly implemented regulations that would
11 prohibit and confiscate these devices); Davis v. Powers, No. C08-5751 FDB/KLS, 2010
12 U.S. Dist. LEXIS 52067, at *27 (W.D. Wash. Apr. 16, 2010) (finding no property interest
13 when a television had to be mailed home because it was in conflict with regulations);
14 Trenton v. Schriro, No. CIV 06-2905-PHX-MHM (DKD), 2007 U.S. Dist. LEXIS 65376, at
15 *4-5 (D. Ariz. Aug. 31, 2007) (no property right for previously allowed typewriter where
16 plaintiff had the option to mail it home rather than have it confiscated); Dunbar v.
17 A.D.O.C., No. CV 08-420-PHX-SMM (MEA), 2008 U.S. Dist. LEXIS 40848, at *11 (D.
18 Ariz. May 12, 2008) (finding no property right deprivation for confiscation of a television
19 pursuant to prison regulations); see also Knight v. Yarborough, No. CV 03-01210-AG
20 (VBK), 2011 U.S. Dist. LEXIS 113710, at *54 (C.D. Cal. Aug. 22, 2011) (noting that
21 "[i]nmates do not have a constitutional right to keep, or to dispose of contraband
22 materials as they wish.").

23 Here, although Plaintiff would be denied the immediate possession of
24 noncompliant property onsite, he can mail it, if free of illicit material, to a location of his
25 choice. See Cal. Code Regs. tit. 9, § 4350(e). Since Plaintiff would retain ownership of
26 the items, no deprivation would have occurred, no protected property right would have
27 been implicated, and so no process would be due. See Valdez v. Rosenbaum, 302 F.3d

1 1039, 1045 (9th Cir.2002) ("Valdez did not have a state-created liberty interest in using a
2 telephone during his pretrial confinement. Accordingly, his procedural due process
3 claims fail.").

4 Finally, even if Plaintiff had a due process interest in the property at issue in
5 Regulation 4350, the process afforded appears to have been adequate. "Ordinarily, due
6 process of law requires [notice and] an opportunity for some kind of hearing prior to the
7 deprivation of a . . . property interest." Halverson v. Skagit County, 42 F.3d 1257, 1260
8 (9th Cir. 1995) (internal quotations and citations omitted). "However, when the action
9 complained of is legislative in nature, due process is satisfied when the legislative body
10 performs its responsibilities in the normal manner prescribed by law." Id.
11 "[G]overnmental decisions which affect large areas and are not directed at one or a few
12 individuals do not give rise to the constitutional due process requirements of individual
13 notice and hearing; general notice as provided is sufficient." Id. at 1260-61. This appears
14 to have been met here.

15 This claim is not cognizable as drafted. Plaintiff will be given leave to amend.

16 **D. Equal Protection**

17 Plaintiff seeks bring claims that Regulation 4350 violates the Equal Protection
18 Clause of the Fourteenth Amendment.

19 The Equal Protection Clause of the Fourteenth Amendment requires that persons
20 who are similarly situated be treated alike. City of Cleburne v. Cleburne Living Ctr., Inc.,
21 473 U.S. 432, 439 (1985). An equal protection claim may be established by showing
22 that Defendants intentionally discriminated against Plaintiff based on his membership in
23 a protected class, Comm. Concerning Cmty. Improvement v. City of Modesto, 583 F.3d
24 690, 702-03 (9th Cir. 2009); Serrano v. Francis, 345 F.3d 1071, 1082 (9th Cir. 2003);
25 Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001), or that similarly situated
26 individuals were intentionally treated differently. Engquist v. Oregon Department of
27 Agriculture, 553 U.S. 591, 601-02 (2008); Village of Willowbrook v. Olech, 528 U.S. 562,

1 564 (2000); Lazy Y Ranch Ltd. v. Behrens, 546 F.3d 580, 592 (9th Cir. 2008); North
2 Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th Cir. 2008).

3 Plaintiff's allegations fail to allege a claim that Defendants treated him, either as a
4 member of an identifiable class or as an individual, differently than they treated other
5 similarly situated individuals. Plaintiff does not explain how Defendant's actions implicate
6 the Equal Protection Clause, and there is no obvious equal protection claim arising from
7 the prohibition of electronics at state hospitals. Plaintiff fails to state an equal protection
8 claim. He will be given leave to amend.

9 **E. Fifth Amendment**

10 To the extent Plaintiff intended to bring a Fifth Amendment claim, "the Fifth
11 Amendment's due process clause applies only to the federal government." Bingue v.
12 Prunchak, 512 F.3d 1169, 1174 (9th Cir. 2008).

13 Plaintiff is a state civil detainee and Defendants are state officials. His due
14 process claims are properly analyzed under the Fourteenth Amendment above. They are
15 not cognizable and are not capable of cure through amendment.

16 **F. Fourth Amendment**

17 Plaintiff seeks to bring claims under the Fourth Amendment against Defendants
18 for violating his Fourth Amendment right to privacy.

19 The Fourth Amendment protects against unreasonable searches and seizures.
20 Prisoners "do not forfeit all constitutional perfections" due to incarceration. Wolfish, 441
21 U.S. at 545. However, the "right of privacy in traditional Fourth Amendment terms is
22 fundamentally incompatible with the close and continual surveillance of inmates and
23 their cells required to ensure institutional security and internal order." Hudson, 468 U.S.
24 at 527-28.

25 Civil detainees have, at best, "a diminished expectation of privacy after
26 commitment to a custodial facility." Bell, 441 U.S. at 557. The Ninth Circuit has found
27 that a limited Fourth Amendment right to be free of unreasonable search and seizure

1 extends to civil detainees. Hydrick, 500 F.3d at 993. A search will violate a civilly
2 detained individual's Fourth Amendment rights if it is "arbitrary, retaliatory, or clearly
3 exceeds the legitimate purpose of detention." Meyers v. Pope, 303 F. App'x 513, 516
4 (9th Cir. 2008); Hydrick, 500 F.3d at 993. In the civil detention context, "the
5 reasonableness of a particular search [or seizure] is determined by reference to the
6 [detention] context." Hydrick, 500 F.3d at 993 (quoting Michenfelder v. Sumner, 860
7 F.2d 328, 332 (9th Cir. 1988)). In the context of secure civil institutions, such as at issue
8 here, there are other concerns that mirror those that arise in the prison context, e.g., "the
9 safety and security of guards and others in the facility, order within the facility and the
10 efficiency of the facility's operations." Id. (quotations omitted).

11 Plaintiff fails to allege a cognizable claim. The facts as alleged indicate that DSH
12 regulations for searching electronic devices and storage are reasonably related to a
13 legitimate interest. Regulation 4350 would allow for Plaintiff to consent to a search and
14 non-contraband material would be sent to a location of Plaintiff's designation. Cal. Code
15 Regs. tit. 9, § 4350(e). These searches allow for DSH to find and remove illicit digital
16 material and secure the facility. There is nothing to suggest the action is arbitrary or
17 retaliatory. Therefore, this does not constitute an unreasonable search. This claim is not
18 cognizable. Plaintiff will be given leave to amend.

19 **VI. Conclusion and Order**

20 Plaintiff's complaint states a cognizable substantive due process claim against
21 Defendants Ahlin, Price, and Carter in their official capacities.

22 The remaining claims are not cognizable as pled. The Court will grant Plaintiff the
23 opportunity to file an amended complaint to cure noted defects, to the extent he believes
24 in good faith he can do so. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987).
25 Alternatively, Plaintiff may forego amendment and notify the Court that he wishes to
26 stand on his complaint. See Edwards v. Marin Park, Inc., 356 F.3d 1058, 1064-65 (9th
27 Cir. 2004) (plaintiff may elect to forego amendment).

1 If Plaintiff does not wish to file an amended complaint, and he is agreeable to
2 proceeding only on the claims found to be cognizable, he may file a notice informing the
3 Court that he does not intend to amend, and he is willing to proceed only on his
4 cognizable claims. The undersigned will then recommend that his remaining claims be
5 dismissed, and the Court will provide Plaintiff with the requisite forms to complete and
6 return so that service of process may be initiated on Defendants Ahlin, Price, and Carter.

7 If Plaintiff chooses to amend, he must demonstrate that the alleged acts resulted
8 in a deprivation of his constitutional rights. Iqbal, 556 U.S. at 677-78. Plaintiff must set
9 forth “sufficient factual matter . . . to ‘state a claim that is plausible on its face.’” Id. at 678
10 (quoting Twombly, 550 U.S. at 555). Plaintiff should note that although he has been
11 given the opportunity to amend, it is not for the purposes of adding new claims. George
12 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints). Plaintiff should
13 carefully read this screening order and focus his efforts on curing the deficiencies set
14 forth above.

15 If Plaintiff files an amended complaint, it should be brief, Fed. R. Civ. P. 8(a), but it
16 must state what each named defendant did that led to the deprivation of Plaintiff’s
17 constitutional rights, Iqbal, 556 U.S. at 676-677. Although accepted as true, the “[f]actual
18 allegations must be [sufficient] to raise a right to relief above the speculative level. . . .”
19 Twombly, 550 U.S. at 555 (citations omitted).

20 Finally, an amended complaint supersedes the prior complaint, see Loux v. Rhay,
21 375 F.2d 55, 57 (9th Cir. 1967), and it must be “complete in itself without reference to the
22 prior or superseded pleading,” Local Rule 220.

23 Accordingly, it is HEREBY ORDERED that:

- 24 1. The Clerk’s Office shall send Plaintiff a blank civil rights complaint
25 form;
- 26 2. Within thirty (30) days from the date of service of this order, Plaintiff must:

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- a. File an amended complaint curing the deficiencies identified by the Court in this order, or
 - b. Notify the Court in writing that he does not wish to file an amended complaint and he is willing to proceed only on the claim found to be cognizable in this order; or
 - c. Notify the Court in writing that he wishes to stand on his complaint as written; and
2. If Plaintiff fails to comply with this order, the undersigned will recommend the action be dismissed for failure to obey a court order and failure to prosecute.

IT IS SO ORDERED.

Dated: March 7, 2018

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE