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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROY RUSS,

Plaintiff,

v.

AUDREY KING, *et al.*,

Defendants.

Case No. 1:18-cv-00789-JDP

SCREENING ORDER

FINDINGS AND RECOMMENDATIONS
THAT PLAINTIFF BE PERMITTED TO
PROCEED ON COGNIZABLE CLAIMS AND
THAT NON-COGNIZABLE CLAIMS BE
DISMISSED WITH LEAVE TO AMEND

OBJECTIONS DUE IN 14 DAYS

ORDER DIRECTING CLERK OF COURT TO
ASSIGN CASE TO DISTRICT JUDGE

ECF No. 1

Plaintiff, a civilly committed person, proceeds without counsel in this civil rights action brought under 42 U.S.C. § 1983. Plaintiff's complaint, filed June 8, 2018, ECF No. 1, is before the court for screening under 28 U.S.C. § 1915(e). Plaintiff complains of due process violations. We have screened plaintiff's complaint and find that it states claims against defendants King and Spence. We recommend that plaintiff's remaining claims be dismissed without prejudice and that he be granted leave to amend his complaint.

1 **I. STATEMENT OF FACTS¹**

2 Plaintiff is civilly committed at Coalinga State Hospital (“CSH”) under California’s
3 Sexually Violent Predator Act (“SVPA”). ECF No. 1 at 1. Defendant King was the executive
4 director at CSH during the relevant period. *Id.* at 2. Defendant Van de Putte was the senior
5 forensic psychologist at CSH. *Id.* Defendant Allenby was the interim director of the department
6 of state hospitals. *Id.* Defendant Spence was the deputy attorney general. *Id.*

7 On December 19, 2013, plaintiff had an annual evaluation, conducted by Dr. Carl
8 Bonacci, to determine if plaintiff’s mental condition had so changed that he no longer met the
9 definition of a sexually violent predator (“SVP”). *Id.* at 2 (citing Cal. Welf. & Inst. Code
10 § 6604.9). Dr. Bonacci determined that plaintiff “no longer fit the criteria for commitment as an
11 SVP and recommended [p]laintiff for unconditional release and discharge.” *Id.* at 2-3. On
12 January 2, 2014, the medical director of CSH sent Dr. Bonacci’s evaluation of plaintiff to the
13 Kern County Superior Court. *Id.* at 3, 11. The cover letter to the court stated: “I am in agreement
14 with the findings and recommendation made in this report.” *Id.* at 11. Plaintiff was also given a
15 copy of Dr. Bonacci’s report, which prompted him to request that CSH file for state habeas
16 corpus relief under Cal. Welf. & Inst. Code § 6605(c). *Id.* at 3. On January 8, 2014, plaintiff met
17 with defendant Van de Putte, and several other CSH employees, to discuss his request. *Id.*
18 Defendant Van de Putte told plaintiff that CSH would not file a habeas petition on behalf of
19 plaintiff. *Id.* at 3, 13.

20 Plaintiff complained in writing to defendant King, who advised plaintiff to file for release
21 himself. *Id.* at 3, 13, 15. Plaintiff also complained to defendant Allenby, but his written request
22 was forwarded to defendant King. *Id.* at 3. Defendant King responded by stating that CSH

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24 ¹ We draw the following facts from plaintiff’s complaint, ECF No. 1, and accept them as true for
25 screening purposes. We note that the complaint does not appear to be barred by the favorable
26 termination rule in *Heck v. Humphrey*, 512 U.S. 477 (1994), because plaintiff’s state habeas
27 petition would prevent him from filing a federal habeas petition. *See Huftile v. Miccio-Fonseca*,
28 410 F.3d 1136, 1140 (9th Cir. 2005) (recognizing “that *Heck* applies to SVPA detainees with
access to habeas relief”); *Franzen v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989) (*per curiam*)
(holding that federal habeas relief is not available to a plaintiff challenging a state post-conviction
review process).

1 would “comply with any court order.” *Id.* Thus, on March 10, 2014, plaintiff filed a writ of
2 mandamus to compel CSH to file a habeas petition. *Id.* On February 12, 2015, the court granted
3 the writ and ordered defendant King to file a habeas petition on plaintiff’s behalf pursuant to Cal.
4 Welf. & Inst. Code § 6605(c). *Id.*

5 On June 30, 2015, defendant King, represented by defendant Spence, filed the petition for
6 habeas corpus. *Id.* at 4. Plaintiff sought to expedite the habeas process because of his liberty
7 interest at stake and because of the one-year delay obtaining the writ of mandamus. *Id.*
8 However, defendant Spence refused plaintiff’s request and delayed the process. *Id.* Time was
9 also “vital” to plaintiff because, around the time that the court ordered defendant King to file the
10 habeas petition for plaintiff, CSH was in the process of obtaining another annual review of
11 plaintiff. *Id.* This second review was ultimately submitted to the court. *Id.*

12 Plaintiff wrote defendant Spence multiple times seeking movement on his habeas case, but
13 to no avail. *Id.* at 4, 24-27. On September 18, 2015, the court issued a show cause order on
14 plaintiff’s writ of habeas corpus, which noted plaintiff’s April 30, 2015 review and that defendant
15 Spence had failed to serve a necessary party to the case. *Id.* at 29-31. Ultimately, “as a result of
16 that [April 30, 2015] evaluation,” plaintiff’s habeas petition was denied. *Id.* at 4.

17 **II. SCREENING AND PLEADING REQUIREMENTS**

18 A district court must screen a prisoner’s complaint that seeks relief against a governmental
19 entity, its officer, or its employee. *See* 28 U.S.C. § 1915A(a). The court must identify any
20 cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to
21 state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is
22 immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2).

23 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
24 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
25 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
26 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
27 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
28 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not

1 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
2 1038 (9th Cir. 2016) (quoting *Skinner v. Switzer*, 562 U.S. 521, 530 (2011)). Instead, what
3 plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to
4 relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)
5 (citations omitted).

6 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
7 U.S. 519, 520 (1972) (per curiam). However, the court may dismiss a pro se litigant’s complaint
8 “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim
9 which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir.
10 2017) (quoting *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)).

11 **III. DISCUSSION**

12 Section 1983 allows a private citizen to sue for the deprivation of a right secured by
13 federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To
14 state a claim under § 1983, a plaintiff must show that a defendant acting under color of state law
15 caused an alleged deprivation of a right secured by federal law. *See* 42 U.S.C. § 1983; *Soo Park*
16 *v. Thompson*, 851 F.3d 910, 921 (9th Cir. 2017). The plaintiff can satisfy the causation
17 requirement by showing either (1) the defendant’s “personal involvement” in the alleged
18 deprivation or (2) a “sufficient causal connection” between the defendant’s conduct as a
19 supervisor and the alleged deprivation. *See King v. Cty. of Los Angeles*, 885 F.3d 548, 559 (9th
20 Cir. 2018). As for the second method, the plaintiff can establish a causal connection by showing
21 that the defendant “set[] in motion a series of acts by others, or by knowingly refus[ing] to
22 terminate a series of acts by others,” which the defendant “knew or reasonably should have
23 known would cause others to inflict a constitutional injury.” *Id.*

24 All of the named defendants are state employees who, accepting plaintiff’s allegations as
25 true, can be inferred to have acted under color of state law. *See Paeste v. Gov’t of Guam*, 798
26 F.3d 1228, 1238 (9th Cir. 2015) (“[G]enerally, a public employee acts under color of state law
27 while acting in his official capacity or while exercising his responsibilities pursuant to state law.”
28 (quoting *West v. Atkins*, 487 U.S. 42, 50 (1988))). We next consider whether plaintiff alleged

1 sufficient facts to satisfy the causation requirement.

2 Plaintiff plausibly alleges that defendants Spence and King personally participated in or
3 caused the alleged deprivations. However, plaintiff does not plausibly allege that defendants Van
4 de Putte and Allenby personally participated in or caused the alleged deprivations. Plaintiff
5 alleges that defendant Van de Putte told him that CSH would not follow the law, but does not
6 allege any facts tending to show that defendant Van de Putte caused plaintiff's deprivations.
7 Similarly, regarding defendant Allenby, plaintiff alleges that he failed to respond to a
8 communication. These allegations do not satisfy the causation requirement of § 1983 because the
9 alleged actions of these defendants were not "the moving force of the behind the constitutional
10 violation." *Navarro v. Herndon*, 2016 WL 8731088, at *13 (E.D. Cal. Mar. 25, 2016) (citing
11 *Williams v. Ellington*, 936 F.2d 881, 884-85 (9th Cir. 1991)). Accordingly, plaintiff fails to allege
12 causation for defendants Van de Putte and Allenby as required to bring a claim under § 1983.
13 Plaintiff will be given leave to amend his complaint.

14 The remaining question is whether defendants King and Spence's alleged actions violated
15 federal law. Plaintiff seeks to bring claims for violations of due process.

16 **A. Procedural Due Process**

17 Plaintiff claims that his liberty interest in not being detained without due process was
18 violated: (1) when defendant King refused to file a habeas petition for plaintiff's release, which
19 caused plaintiff to file for a writ of mandamus; (2) when defendants King and Spence delayed
20 filing the petition even after a court mandate and refused to seek expedited proceedings despite
21 the significant time lost obtaining the mandate; and, (3) when defendants King and Spence used
22 the delay to submit plaintiff's April 30, 2015 evaluation to the court. The Due Process Clause
23 protects individuals from deprivations of liberty without due process of law. U.S. Const. amend.
24 XIV. A procedural due process claim consists of two parts: (1) a life, liberty, or property interest
25 that has been subject to interference by the state; and (2) constitutionally insufficient procedures
26 attendant upon the deprivation. *Kentucky Dept. of Corrections v. Thompson*, 490 U.S. 454, 460
27 (1990). The required procedural protections vary depending upon the circumstances. *See*
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1 *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005).

2 Plaintiff has a strong liberty interest in not being detained. *See Foucha v. Louisiana*, 504
3 U.S. 71, 80 (1992) (recognizing that civil commitment is a “significant deprivation” of liberty).
4 Thus, the remaining issue is whether plaintiff was subjected to constitutionally insufficient
5 procedures. The SVPA, as written, has been upheld against due process challenges. *See Hubbart*
6 *v. Knapp*, 379 F.3d 773, 781 (9th Cir. 2004). However, plaintiff does not make a facial challenge
7 to the statute. He argues that the process he received was not in accordance with the SVPA, or,
8 alternatively, that the process he received was unconstitutional under the SVPA as applied in his
9 case. At this screening stage, we find that plaintiff has sufficiently stated a claim that his
10 procedural due process rights were violated by defendants King and Spence.

11 **IV. CONCLUSION**

12 The court has screened plaintiff’s complaint and finds that plaintiff has stated a procedural
13 due process claim against defendants King and Spence. We recommend that plaintiff’s remaining
14 claims be dismissed without prejudice and that plaintiff be granted leave to amend the complaint.

15 Should plaintiff choose to amend the complaint, the amended complaint should be brief,
16 Fed. R. Civ. P. 8(a), but must state what each named defendant did that led to the deprivation of
17 plaintiff’s constitutional or other federal rights. *See Iqbal*, 556 U.S. at 678; *Jones v. Williams*,
18 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must set forth “sufficient factual matter . . . to ‘state a
19 claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S.
20 at 570). There is no *respondeat superior* liability, and each defendant is only liable for his or her
21 own misconduct. *See id.* at 677. Plaintiff must allege that each defendant personally participated
22 in the deprivation of his rights. *Jones*, 297 F.3d at 934 (emphasis added). Plaintiff should note
23 that a short, concise statement of the allegations in chronological order will assist the court in
24 identifying his claims. Plaintiff should name each defendant and explain what happened,
25 describing personal acts by the individual defendant that resulted in the violation of plaintiff’s
26 rights. Plaintiff should also describe any harm he suffered from the violation of his rights.
27 Plaintiff should not fundamentally alter his complaint or add unrelated issues. *See Fed. R. Civ. P.*
28 *18; George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (“Unrelated claims against different

1 defendants belong in different suits . . .”).

2 Any amended complaint will supersede the original complaint, *Lacey v. Maricopa*
3 *County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be complete on its face
4 without reference to the prior, superseded pleading, *see* E.D. Cal. Local Rule 220. Once an
5 amended complaint is filed, the original complaint no longer serves any function in the case.
6 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
7 of each defendant must be sufficiently alleged. The amended complaint should be titled “First
8 Amended Complaint,” refer to the appropriate case number, and be an original signed under
9 penalty of perjury.

10 **IV. ORDER**

11 The clerk of court is directed to assign this case to a district judge, who will preside over
12 this case. The undersigned will remain as the magistrate judge assigned to the case.

13 **V. RECOMMENDATIONS**

14 Under 28 U.S.C. § 636(c)(1), all parties named in a civil action must consent to a
15 magistrate judge’s jurisdiction before that jurisdiction vests for “dispositive decisions.” *Williams*
16 *v. King*, 875 F.3d 500, 504 (9th Cir. 2017). No defendant has appeared or consented to a
17 magistrate judge’s jurisdiction, so any dismissal of a claim requires an order from a district judge.
18 *Id.* Thus, the undersigned submits the following findings and recommendations to a United
19 States District Judge under 28 U.S.C. § 636(b)(1):

- 20 1. Plaintiff states a procedural due process claim against defendants King and Spence.
- 21 2. Plaintiff’s remaining claims and all other defendants should be dismissed without
22 prejudice, and plaintiff should be granted leave to amend the complaint.
- 23 3. If plaintiff files an amended complaint, defendants Van de Putte and Allenby need not
24 respond until the court screens the amended complaint.

25 Within fourteen days of service of these findings and recommendations, the parties may
26 file written objections with the court. If the parties file such objections, they should do so in a
27 document captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The
28 parties are advised that failure to file objections within the specified time may result in the waiver

1 of rights on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing
2 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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4 IT IS SO ORDERED.

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6 Dated: April 12, 2019


UNITED STATES MAGISTRATE JUDGE

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