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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID E. MACKEY,
Plaintiff,
v.
BRANDON PRICE, *et al.*,
Defendants.

Case No. 1:20-cv-01813-BAM (PC)
**ORDER DIRECTING CLERK OF COURT TO
RANDOMLY ASSIGN A DISTRICT JUDGE
TO THIS ACTION**
**FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION**
FOURTEEN-DAY DEADLINE

Plaintiff David E. Mackey (“Plaintiff”) is a civil detainee proceeding *pro se* in this case. Persons detained pursuant to California Welfare and Institutions Code § 6600 et seq. are civil detainees and are not prisoners within the meaning of the Prison Litigation Reform Act. *Page v. Torrey*, 201 F.3d 1136, 1140 (9th Cir. 2000). The Court screened Plaintiff’s complaint and granted leave to amend. Plaintiff’s first amended complaint, filed on April 14, 2021, is before the Court for screening. (ECF No. 7.)

I. Screening Requirement

The Court screens complaints brought by persons proceeding in *pro se* and in *forma pauperis*. 28 U.S.C. § 1915(e)(2). 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

1 U.S.C. § 1915(e)(2)(B)(ii).

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

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

15 **II. Plaintiff’s Allegations**

16 Plaintiff is currently housed at Coalinga State Hospital. The events in the first amended
17 complaint are alleged to have occurred at Coalinga State Hospital. Plaintiff names the following
18 defendants: (1) Government Claims Program, (2) Department of State Hospital Accounting
19 Claims Coordinator; (3) Brandon Price, Executive Director, and (4) Lisa Adams.¹

20 Plaintiff alleges that is he attaching additional exhibits A, 1-4, copies of his Patient Rights
21 Complaint Form and copies of his veterans group receipt and meals in the amount of \$110.50
22 paid for. Plaintiff alleges the Government Claims Program and the Office of Risk and Insurance
23 Management violated his rights by not paying Plaintiff back for the \$110.50 meals or giving him
24 the meals. Plaintiff alleges that both Brandon Price and Lisa Adams are aware that the trust

25 ¹ The Defendants listed in the caption are different than those identified in the allegations. In the
26 allegations, Plaintiff identifies only two defendants: Brandon Price “et al.”, Executive Director
27 and Lisa Adams. Plaintiff is reminded that Rule 10(a) of the Federal Rules of Civil Procedure
28 requires that each defendant be named in the caption of the complaint. A complaint is subject to
dismissal if “one cannot determine from the complaint who is being sued, [and] for what relief...”
McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996).

1 office did not give Plaintiff “my veterans group-receipt, with the meals and the amount of money
2 that was paid for the meals-\$110.50.” (Doc. 7, p.4.) Plaintiff alleges that all of the defendants
3 deprived Plaintiff of his constitutional rights. Plaintiff wants to be reimbursed for the full amount
4 of \$110.50 for the veterans meals and for pain and suffering of \$600.

5 From the exhibits attached to the first amended complaint, it appears Plaintiff filed a
6 complaint with the Office of Patients’ Rights regarding the meals he did not receive and paid for
7 in the amount of \$110.50, which he could not receive because of the lockdown. The response
8 from the Office of Patients’ Rights was that that Office could not support that a patients’ rights
9 were neglected. He was advised of his options including filing for reimbursement for property
10 loss. (Doc. 7, p.13.)

11 **III. Discussion**

12 Plaintiff’s complaint fails to comply with Federal Rule of Civil Procedure 8 and fails to
13 state a cognizable claim under 42 U.S.C. § 1983.

14 **A. Federal Rule of Civil Procedure 8**

15 Pursuant to Federal Rule of Civil Procedure 8, a complaint must contain “a short and plain
16 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). Detailed
17 factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,
18 supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citation
19 omitted). Plaintiff must set forth “sufficient factual matter, accepted as true, to ‘state a claim to
20 relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570,
21 127 S.Ct. at 1974). While factual allegations are accepted as true, legal conclusions are not. *Id.*;
22 *see also Twombly*, 550 U.S. at 556–557.

23 Although Plaintiff’s complaint is short, it is not a plain statement of his claims. As a basic
24 matter, the complaint does not clearly state what happened, when it happened or who was
25 involved. Plaintiff’s allegations must be based on facts as to what happened and not conclusions.
26 Plaintiff has failed to cure this deficiency.

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1 **B. Linkage Requirement**

2 The Civil Rights Act under which this action was filed provides:

3 Every person who, under color of [state law]...subjects, or causes to be subjected,
4 any citizen of the United States...to the deprivation of any rights, privileges, or
5 immunities secured by the Constitution...shall be liable to the party injured in an
6 action at law, suit in equity, or other proper proceeding for redress.

6 42 U.S.C. § 1983.

7 The statute plainly requires that there be an actual connection or link between the actions
8 of the defendants and the deprivation alleged to have been suffered by Plaintiff. *See Monell v.*
9 *Dep't of Soc. Servs.*, 436 U.S. 658, (1978); *Rizzo v. Goode*, 423 U.S. 362, (1976). The Ninth
10 Circuit has held that “[a] person ‘subjects another to the deprivation of a constitutional right,
11 within the meaning of section 1983, if he does an affirmative act, participates in another’s
12 affirmative acts or omits to perform an act which he is legally required to do that causes the
13 deprivation of which complaint is made.’” *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir.1978).

14 As it was in the original complaint, it is unclear who the Department of State Hospital
15 Accounting Claims Coordinator is and what that person did to violate Plaintiff’s constitutional
16 rights. It is unclear if he is suing another state department. Plaintiff has been unable to cure this
17 deficiency by alleging what each individual defendant did or did not do that caused the asserted
18 deprivation.

19 **C. Supervisor Liability**

20 Insofar as Plaintiff is attempting to sue Defendant Brandon Price, or any other defendant,
21 based solely upon his supervisory role, he may not do so. Liability may not be imposed on
22 supervisory personnel for the actions or omissions of their subordinates under the theory of
23 respondeat superior. *Iqbal*, 556 U.S. at 676–77; *Simmons v. Navajo Cty., Ariz.*, 609 F.3d 1011,
24 1020–21 (9th Cir. 2010); *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009); *Jones v.*
25 *Williams*, 297 F.3d 930, 934 (9th Cir. 2002)

26 Supervisors may be held liable only if they “participated in or directed the violations, or
27 knew of the violations and failed to act to prevent them.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th
28 Cir. 1989); *accord Starr v. Baca*, 652 F.3d 1202, 1205–06 (9th Cir. 2011); *Corales v. Bennett*,

1 567 F.3d 554, 570 (9th Cir. 2009). Supervisory liability may also exist without any personal
2 participation if the official implemented “a policy so deficient that the policy itself is a
3 repudiation of the constitutional rights and is the moving force of the constitutional violation.”
4 *Redman v. Cty. of San Diego*, 942 F.2d 1435, 1446 (9th Cir. 1991) (citations and quotations
5 marks omitted), abrogated on other grounds by *Farmer v. Brennan*, 511 U.S. 825 (1970).

6 To prove liability for an action or policy, the plaintiff “must... demonstrate that his
7 deprivation resulted from an official policy or custom established by a... policymaker possessed
8 with final authority to establish that policy.” *Waggy v. Spokane County Washington*, 594 F.3d
9 707, 713 (9th Cir.2010). When a defendant holds a supervisory position, the causal link between
10 such defendant and the claimed constitutional violation must be specifically alleged. *See Fayle v.*
11 *Stapley*, 607 F.2d 858, 862 (9th Cir. 1979); *Mosher v. Saalfeld*, 589 F.2d 438, 441 (9th Cir.
12 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in
13 civil rights violations are not sufficient. *See Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir.
14 1982).

15 Plaintiff’s conclusory statements, without factual support, are insufficient to state a
16 cognizable claim of supervisory liability. *See Iqbal*, 556 U.S. at 678. Plaintiff has failed to allege
17 facts to support that any supervisory Defendant participated in or directed the violations, or knew
18 of the violations and failed to act to prevent them. Plaintiff’s conclusory allegation that
19 defendants “knew” the trust office did not give him his money is insufficient. Plaintiff also has
20 failed to plead facts showing that any policy was a moving force behind the alleged constitutional
21 violations. *See Willard v. Cal. Dep't of Corr. & Rehab.*, No. 14-0760, 2014 WL 6901849, at *4
22 (E.D. Cal. Dec. 5, 2014) (“To premise a supervisor's alleged liability on a policy promulgated by
23 the supervisor, plaintiff must identify a specific policy and establish a ‘direct causal link’ between
24 that policy and the alleged constitutional deprivation.”). *See Fayle v. Stapley*, 607 F.2d 858, 862
25 (9th Cir. 1979)

26 (the director of the state health department has no liability, unless director personally participated
27 in the taking of his property)

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1 **D. Eleventh Amendment Immunity**

2 The Eleventh Amendment bars federal jurisdiction over suits by individuals against a
3 State and its instrumentalities, unless the State consents to waive its sovereign immunity or
4 Congress abrogates it. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 99-100
5 (1984). To overcome this Eleventh Amendment bar, the State's consent or Congress' intent must
6 be “unequivocally expressed.” *Pennhurst*, 465 U.S. at 99. While California has consented to be
7 sued in its own courts pursuant to the California Tort Claims Act, such consent does not
8 constitute consent to suit in federal court. *See BV Engineering v. Univ. of California*, 858 F.2d
9 1394, 1396 (9th Cir. 1988); *see also Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985)
10 (holding that Art. III, § 5 of the California Constitution does not constitute a waiver of
11 California's Eleventh Amendment immunity). Finally, Congress has not repealed state sovereign
12 immunity against suits brought under 42 U.S.C. § 1983.

13 Plaintiff continues to name the Government Claim Program, which is within the
14 California Department of General Services. Because the Department of General Services is a state
15 agency, it is immune from civil rights claims raised pursuant to Section 1983. *See Pennhurst*, 465
16 U.S. at 100 (“ This jurisdictional bar applies regardless of the nature of the relief sought.”); *see*
17 *also Alabama v. Pugh*, 438 U.S. 781, 782 (1978) (per curiam) (the Eleventh Amendment bars
18 claim for injunctive relief against Alabama and its Board of Corrections). Plaintiff has been
19 unable to cure this deficiency.

20 **E. Procedural Due Process**

21 Plaintiff fails to state a procedural Due Process claim for the withdrawal of funds from his
22 trust account.

23 The Due Process Clause of the Fourteenth Amendment guarantees “procedural fairness”
24 and protects prisoners and civil detainees alike from being deprived of property without due
25 process of law. *See Wolff v. McDonnell*, 418 U.S. 539, 556, 94 S.Ct. 2963, 41 L.Ed.2d 935
26 (1974); *see also Crawford v. Guild*, 56 F.3d 1162, 1165 (9th Cir.1995) (citing with approval
27 district court's finding that withdrawals from involuntarily committed patients' trust accounts
28 violated due process). Where a plaintiff is deprived of a protected property interest by operation

1 of “established state procedure, rather than random and unauthorized action,” then he or she is
2 generally entitled to predeprivation process. *Hudson v. Palmer*, 468 U.S. 517, 532, 104 S.Ct.
3 3194, 82 L.Ed.2d 393 (1984) (citing *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 435–436,
4 102 S.Ct. 1148, 71 L.Ed.2d 265 (1982)); *Newman v. Sathyavaglswaran*, 287 F.3d 786, 799 (9th
5 Cir.2002).

6 Here, an involuntarily committed mental patient has “substantial property interests” in his
7 deposit fund and the benefits deposited therein, *Fayle*, 607 F.2d at 861 n. 2, and if Defendants
8 deprived Plaintiff of this property pursuant an “established state procedure,” Plaintiff was entitled
9 to some predeprivation process before his money was withdrawn. *Id.*; *see also Crawford*, 56 F.3d
10 at 1165; *Brinkman v. Rahm*, 878 F.2d 263, 265 (9th Cir.1989). However, Plaintiff has failed to
11 allege who was responsible to withdraw the money and on what authorization.

12 Indeed, in *Crawford*, the Ninth Circuit outlined the constitutionally adequate process due
13 a patient prior to a withdrawal under § 7821²: the state must 1) inform the patient of his or her
14 proposed share of the cost of care and the facts on which the determination was made; and 2) of
15 his or her right to appeal the share of cost determination; 3) provide a description of the appeal
16 process and procedure; and 4) inform the patient that certain federal benefits, including Social
17 Security benefits, are exempt from legal process and cannot be used to pay the plaintiff's cost of
18 care without the patient's consent. *Crawford*, 56 F.3d at 1165 (quoting the district court's remedy
19 for the constitutionally deficient notice California provided). However, the patient's consent is not
20 required to withdraw funds, other than Social Security benefits. *See Crawford*, 56 F.3d at 1166–
21 1167; *see also Fayle*, 607 F.2d at 861 (finding that Fayle was entitled to notice and a hearing prior
22 to entry of a court order authorizing withdrawals from his account, but not that his consent was
23 required).

24 Here, although the allegations are unclear, it does not appear that pre-withdrawal consent

25 ² Cal. Welf. & Inst. Code § 7281 (West) states in pertinent part: “There is at each institution under
26 the jurisdiction of the State Department of State Hospitals and at each institution under the
27 jurisdiction of the State Department of Developmental Services, a fund known as the patients'
28 personal deposit fund. Any funds coming into the possession of the superintendent, belonging to
any patient in that institution, shall be deposited in the name of that patient in the patients'
personal deposit fund . . .”

1 is at issue. The funds withdrawn were other than Social Security benefits and thus not subject to
2 pre-withdrawal due process. Plaintiff has neither described the process he received prior to the
3 withdrawals from his trust account, nor indicated that such process failed to meet the
4 requirements in *Crawford*. Indeed, it appears that Plaintiff consented to the withdrawal of the
5 money from his trust account for payment for the Veterans Group meeting, but now objects that
6 the group could not meet due to lockdowns. He seeks a refund of money taken. For the reasons
7 explained above, he fails to state a due process claim on this basis. If he is not constitutionally
8 entitled to due process for withdrawal of funds, he is not constitutionally entitled to a refund for
9 funds which were withdrawn with his consent. Despite being provided with pleading and legal
10 standards, Plaintiff has been unable to cure this deficiency.

11 **IV. Conclusion and Order**

12 Plaintiff's first amended complaint fails to state a cognizable claim for relief. Despite being
13 provided with relevant pleading and legal standards, Plaintiff has been unable to cure the
14 deficiencies in his complaint by amendment, and thus further leave to amend is not warranted.
15 Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

16 Accordingly, the Court HEREBY DIRECTS the Clerk of the Court to randomly assign a
17 district judge to this action.

18 Further, for the reasons stated above, IT IS HEREBY RECOMMENDED that this action
19 be dismissed based on Plaintiff's failure to state a cognizable claim upon which relief may be
20 granted.

21 These Findings and Recommendation will be submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14)**
23 **days** after being served with these Findings and Recommendation, Plaintiff may file written
24 objections with the Court. The document should be captioned "Objections to Magistrate Judge's

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1 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
2 specified time may result in the waiver of the “right to challenge the magistrate’s factual findings”
3 on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
4 F.2d 1391, 1394 (9th Cir. 1991)).

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6 IT IS SO ORDERED.

7 Dated: April 15, 2021

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

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