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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL SCOTT ARCELUS,
Plaintiff,
v.
WANDA KILLION, et al.,
Defendants.

Case No. [15-cv-05719-JD](#)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Michael Scott Arcelus, who is being held at Napa State Hospital, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

I. STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Although a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above

1 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
2 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its
3 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”
4 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they
5 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
6 should assume their veracity and then determine whether they plausibly give rise to an entitlement
7 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

8 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that: (1) a right secured by
9 the Constitution or laws of the United States was violated, and (2) the alleged deprivation was
10 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

11 **II. LEGAL CLAIMS**

12 Arcelus seeks monetary damages against doctors who allegedly extended his legal
13 commitment.

14 In order to recover damages for an allegedly unconstitutional conviction or imprisonment,
15 or for other harm caused by actions whose unlawfulness would render a conviction or sentence
16 invalid, a 42 U.S.C. § 1983 plaintiff must prove that the conviction or sentence has been reversed
17 on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to
18 make such determination, or called into question by a federal court’s issuance of a writ of habeas
19 corpus. *Heck v. Humphrey*, 512 U.S. 477, 486-487 (1994). A claim for damages bearing that
20 relationship to a conviction or sentence that has not been so invalidated is not cognizable under §
21 1983. *Id.* at 487.

22 In his brief complaint, Arcelus argues that defendants used false information to imprison
23 him and extend his legal commitment pursuant to California Penal Code section 1026, which
24 involves pleas of insanity. He provides little information regarding his underlying commitment
25 and the extension that appears to have occurred in 2014 and 2015. To the extent Arcelus seeks
26 monetary damages he may only continue if the commitment extension has been invalidated or
27 reversed. His arguments that defendants used false information and lied directly apply to the
28 validity of the commitment extension. The complaint will be dismissed with leave to amend to

1 provide more information concerning the underlying commitment and the extension and why this
2 action is not barred by *Heck*.


3 **CONCLUSION**

4 1. The complaint is **DISMISSED** with leave to amend. The amended complaint must
5 be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption
6 and civil case number used in this order and the words AMENDED COMPLAINT on the first
7 page. Because an amended complaint completely replaces the original complaint, plaintiff must
8 include in it all the claims he wishes to present. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th
9 Cir. 1992). He may not incorporate material from the original complaint by reference. Failure to
10 amend within the designated time will result in the dismissal of this action.

11 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
12 Court informed of any change of address by filing a separate paper with the clerk headed "Notice
13 of Change of Address," and must comply with the Court's orders in a timely fashion. Failure to
14 do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
15 Civil Procedure 41(b).

16 **IT IS SO ORDERED.**

17 Dated: January 8, 2016

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21 _____
22 JAMES DONATO
23 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 MICHAEL SCOTT ARCELUS,
4 Plaintiff,
5 v.
6 WANDA KILLION, et al.,
7 Defendants.
8

Case No. [15-cv-05719-JD](#)

CERTIFICATE OF SERVICE

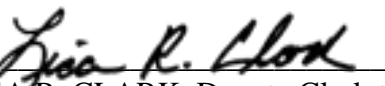
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on January 8, 2016, I SERVED a true and correct copy(ies) of the attached, by
13 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
14 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
15 receptacle located in the Clerk's office.
16

17 Michael Scott Arcelus ID: N.A. 2118214
18 Napa State Hospital
19 2100 Napa Vallejo Hwy
20 Napa, CA 94558-6293

21 Dated: January 8, 2016

22
23 Susan Y. Soong
24 Clerk, United States District Court

25
26 By: 
27 LISA R. CLARK, Deputy Clerk to the
28 Honorable JAMES DONATO