

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

GARY ERIC BOLTON,  
Plaintiff,  
v.  
STEPHEN WIEDER, et al.,  
Defendants.

Case No. [16-cv-01250-LB](#)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

[Re: ECF No. 1 ]

**INTRODUCTION**

Gary E. Bolton, currently a pretrial detainee in custody at Napa State Hospital, filed this *pro se* prisoner’s civil rights action under 42 U.S.C. § 1983. Mr. Bolton has consented to proceed before a magistrate judge. (ECF No. 2.)<sup>1</sup> This action is now before the court for review of Mr. Bolton’s complaint. This order dismisses the complaint, and requires Mr. Bolton to file an amended complaint.

---

<sup>1</sup> Citations are to the Electronic Case File (“ECF”); pin cites are to the ECF-generated page numbers at the tops of the documents.

1 **STATEMENT**

2 This is one of several cases Mr. Bolton has filed since May 2015. The other cases are: *Bolton*  
3 *v. Hall*, No. 15-cv-3365 LB; *Bolton v. Andre Tony Miller*, No. 15-cv-3505 LB; *Bolton v. Chevron*,  
4 No. 15-cv-4406 LB; *Bolton v. Asian Sheriff Officer*, No. 15-cv-4517 LB; *Bolton v. Asian Sheriff*  
5 *Officer*, No. 15-cv-4518 LB; *Bolton v. Ms. Karen*, No. 15-cv-5238 LB; *In re. Bolton*, No. 15-cv-  
6 5566 JD, and *Bolton v Cosgrove*, No. 16-cv-499 LB. Some of the documents Mr. Bolton has filed  
7 in these actions indicate that he has significant mental health problems. Mr. Bolton currently is  
8 being held at Napa State Hospital pursuant to California Penal Code § 1370 to regain competency  
9 to stand trial. (ECF No. 1-1 at 2 in *Bolton v. Cosgrove*, No. 16-cv-499 LB.) He is a pretrial  
10 detainee on a criminal charge that may result in a Three Strikes sentence. (ECF No. 3 in *Bolton v.*  
11 *Asian Sheriff Officer*, No. 15-cv-4517 LB.) Staff at Napa State Hospital are treating, or trying to  
12 treat, him with antipsychotic medications. (See ECF No. 9 in *Bolton v Ms. Karen*, No. 15-cv-5238  
13 LB). In March or April 2015, he was taken into custody pursuant to California Welfare and  
14 Institutions Code § 5150, which allows peace officers and certain other persons to take a person  
15 into custody for up to 72 hours for assessment, evaluation, and crisis intervention if the person, as  
16 a result of a mental health disorder, is gravely disabled or is a danger to others or to himself. (See  
17 ECF Nos. 8 and 9 in *Bolton v. Asian Sheriff Officer*, No. 15-cv-4517 LB.)

18 Not only has he filed numerous actions, Mr. Bolton is an energetic correspondent. He has filed  
19 dozens of letters in the actions filed within the last year. Many of the letters, like many of the  
20 pleadings, repeat the same information and are difficult to understand.

21 In his rather garbled complaint in this action, Mr. Bolton alleges the following:

22 Dr. Wieder, a psychiatrist at Napa State Hospital, attempted to obtain an order permitting the  
23 involuntary administration of psychotropic medication to Mr. Bolton after Mr. Bolton already had  
24 a painful hernia. A hearing was held on March 3, 2016, at which Mr. Bolton was represented by  
25 an attorney. Mr. Bolton believes he performed well at the hearing, and was able to identify the  
26 roles of the participants in the hearing. Mr. Bolton prevailed, and Dr. Wieder did not obtain an  
27 order authorizing the involuntary medication.

1 Mr. Bolton believes that staff are working against him, although his allegations are confusing.

2 He alleges:

3 Today at my staff team meeting four people asked me question and  
4 tryed to make me mad then my doctor Ms. K. Eichenberger walked  
5 out the meeting. I wont to plea not guilty[;] these doctors are telling  
6 me to take a deal or plea N.G.I. Then if I don't say something they  
7 argue with they team up against me. People wrote negative things in  
8 my chart to get me here and the doctors won't give me copies of my  
9 medical records or my medical records. I received a seven year old  
10 girls injection and my blood was stole out my body plus I was in this  
11 or a hospital as be loged into a hospital befor I got here. These staff  
12 and doctors are trying to set me up and they already tried to kill me.  
13 . . . Doctor Wieder read my things in my chart that said leathal  
14 injection. Not giving me medical records. False imprisonment on a  
15 false charge. Accessory to murder. Blood stolen. Organ doner.  
16 Doctors stateing I am paronid.”

17 (ECF No. 1 at 4 (errors in source).)

18 **ANALYSIS**

19 A federal court must engage in a preliminary screening of any case in which a prisoner seeks  
20 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.  
21 § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims  
22 which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek  
23 monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b).

24 The complaint must contain “a short and plain statement of the claim showing that the pleader  
25 is entitled to relief.” Fed. R. Civ. P. 8(a). “Specific facts are not necessary; the statement need only  
26 . . . give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”  
27 *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations and internal quotation marks omitted).  
28 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 the speculative level.” *Bell Atlantic Corp. v. Twombly*,  
550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a  
claim to relief that is plausible on its face.” *Id.* at 570. *Pro se* complaints must be liberally  
construed. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

1 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right  
2 secured by the Constitution or laws of the United States was violated, and (2) that the violation  
3 was committed by a person acting under the color of state law. See *West v. Atkins*, 487 U.S. 42,  
4 48 (1988).

5 To force antipsychotic drugs on a prisoner or on a detainee awaiting trial is impermissible  
6 under the federal constitution, “absent a finding of overriding justification and a determination of  
7 medical appropriateness.” *Riggins v. Nevada*, 504 U.S. 127, 135 (1992); see *Washington v.*  
8 *Harper*, 494 U.S. 210, 229-30 (1990). In the context of *Harper* and *Riggins*, such an invasion of  
9 the human person can only be justified by a determination by a neutral factfinder that the  
10 antipsychotic drugs are medically appropriate and that the circumstances justify their application.  
11 See *Kulas v. Valdez*, 159 F.3d 453, 455-56 (9th Cir. 1998); *id.* at 456 (procedural safeguards  
12 provided for in *Harper* may not apply in an emergency, but no such emergency was shown where  
13 inmate was merely loud and uncooperative).

14 The complaint has several problems. First, the primary focus of the complaint is on an event  
15 that appears ultimately to have caused no harm to Mr. Bolton. Mr. Bolton alleges that Dr. Wieder  
16 *unsuccessfully sought* an order authorizing the involuntary administration of psychotropic  
17 medications. It thus appears that Dr. Wieder’s actions did not result in Mr. Bolton being  
18 involuntarily medicated. Moreover, the description of the proceedings in which Dr. Wieder sought  
19 the order do not suggest a due process violation: Mr. Bolton alleges that a court hearing was held,  
20 that an attorney represented him, and that he was able to and did speak at the hearing. (ECF No.  
21 4). He does not identify any procedural protection that should have been provided but was not  
22 provided. Leave to amend will be granted so that, if he wishes to pursue the claim, Mr. Bolton  
23 may more clearly explain what Dr. Wieder and Dr. Eichenberger did that amounted to a violation  
24 of his rights under the Constitution or laws of the United States.

25 Second, Mr. Bolton appears to draw a connection between a hernia and psychotropic  
26 medications, but the nature of his claim is quite unclear. It cannot be discerned whether he wants  
27 to claim that psychotropic medications cause hernias, or that he should not receive such  
28 medications while having a hernia, or that he is not receiving treatment for a hernia. Insofar as he

1 is trying to allege that the psychotropic medications administered to him have caused a hernia, the  
2 allegation is at least implausible and he would need to allege facts that plausibly suggest a causal  
3 connection between the administration of psychotropic medications and the hernia. If he  
4 developed a hernia while at the hospital and/or while medicated, that alone does not support the  
5 view that the hernia was caused by the medication. If he is trying to allege that psychotropic  
6 medications should not be given to a person with a hernia, he needs to allege the factual basis for  
7 his belief, e.g., whether a medical professional told him that psychotropic medications are contra-  
8 indicated for someone with a hernia or he just has decided on his own that is the case, or  
9 otherwise. If he is trying to allege that his hernia is not being treated, he should allege when he  
10 requested treatment, who failed or refused to treat the hernia, and when that person failed or  
11 refused to treat the hernia. It seems unlikely that a psychiatrist would be tasked with treating a  
12 patient's hernia, and Napa State Hospital may have doctors to treat physical ailments, who might  
13 be more suitable defendants if Mr. Bolton wants to allege a claim about unsuccessful efforts to  
14 obtain treatment from the medical staff.

15 Third, allegations that Mr. Bolton's blood was stolen and that he was given a seven year old  
16 girl's injection appear to be somewhere on the spectrum between implausible and delusional.<sup>2</sup> The  
17 *in forma pauperis* statute, 28 U.S.C. § 1915, and the prisoner litigation screening statute, 28  
18 U.S.C. § 1915A, accord judges "not only the authority to dismiss a claim based on an indisputably  
19 meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual  
20 allegations and dismiss those claims whose factual contentions are clearly baseless." *Denton v.*  
21 *Hernandez*, 504 U.S. 25, 32 (1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)).  
22 "Examples of the latter class are claims describing fantastic or delusional scenarios, claims with  
23 which federal district judges are all too familiar." *Neitzke*, 490 U.S. at 328; *see also Andrews v.*  
24 *King*, 398 F.3d 1118 (9th Cir. 2005) (a case "is frivolous if it is 'of little weight or importance:  
25 having no basis in law or fact.>"). Even a complaint that is not actually delusional, but does not  
26 state enough facts to state a claim to relief that is plausible on its face, is deficient. *See Bell*

27 \_\_\_\_\_  
28 <sup>2</sup> In an earlier action, Mr. Bolton alleged that his blood was stolen and he was made an involuntary  
organ donor by persons outside the hospital. *See Bolton v. Miller*, 14-cv-3505 LB.

1 *Atlantic Corp. v. Twombly*, 550 U.S. at 555. Mr. Bolton’s allegations that his blood was stolen and  
2 that he received a seven year old girl’s injection fail to state enough facts to present a claim to  
3 relief that is plausible on its face. In his amended complaint, he can try to allege facts that would  
4 make these allegations plausible if he wants to pursue such claim.

5 Fourth, Mr. Bolton alleges that the staff will not provide him medical records. If he wishes to  
6 pursue this claim, he needs to identify the person(s) who refuse to provide his medical records. He  
7 also needs to explain what constitutional right was violated by the failure to provide medical  
8 records to him.

9 Fifth, many of Mr. Bolton’s allegations are about things that simply don’t amount to  
10 constitutional violations. Allegations of verbal harassment or even threats -- e.g., the allegations  
11 that doctors and staff state that he is paranoid, argue with him and try to make him mad -- do not  
12 state a cognizable claim under § 1983 because “mere words, without more, do not invade a  
13 federally protected right.” *Burton v. Livingston*, 791 F.2d 97, 99 (8th Cir. 1986); *see also Gautt v.*  
14 *Sunn*, 810 F.2d 923, 925 (9th Cir. 1987) (mere threat does not amount to constitutional wrong, nor  
15 do allegations that naked threat was for purpose of denying access to courts compel contrary  
16 result). And allegations about things that *almost* happened -- e.g., the doctors allegedly trying to  
17 set him up for something bad to happen -- do not state a claim upon which relief may be granted if  
18 nothing occurred that amounted to a constitutional violation.

19 Sixth, the action cannot proceed against Napa State Hospital. The Eleventh Amendment to the  
20 U.S. Constitution bars from the federal courts suits against a state by its own citizens, citizens of  
21 another state, or citizens or subjects of any foreign state. *Atascadero State Hosp. v. Scanlon*, 473  
22 U.S. 234, 237-38 (1985). Eleventh Amendment immunity also extends to suits against a state  
23 agency. *See Brown v. Cal. Dep’t of Corrs.*, 554 F.3d 747, 752 (9th Cir. 2009) (California  
24 Department of Corrections and California Board of Prison Terms entitled to Eleventh Amendment  
25 immunity); *see also Allison v. Cal. Adult Auth.*, 419 F.2d 822, 823 (9th Cir. 1969) (California  
26 Adult Authority and San Quentin State Prison not persons within meaning of Civil Rights Act).  
27 Napa State Hospital is dismissed from this action because it is an agency of the State of California  
28 and has Eleventh Amendment immunity against the suit.

1 In his amended complaint, Mr. Bolton must be careful to allege facts showing the basis for  
2 liability for each defendant. He should not refer to them as a group (e.g., "the defendants"); rather,  
3 he should identify each involved defendant by name and link each of them to his claim by  
4 explaining what each involved defendant did or failed to do that caused a violation of his rights.  
5 *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). Mr. Bolton is cautioned that there is no  
6 respondeat superior liability under Section 1983, i.e. no liability under the theory that one is  
7 responsible for the actions or omissions of an employee. Liability under Section 1983 arises only  
8 upon a showing of personal participation by the defendant. *Taylor v. List*, 880 F.2d 1040, 1045  
9 (9th Cir. 1989). Mr. Bolton is cautioned to take great care to provide a coherent statement of his  
10 claim(s) in his amended complaint. The court will not read through his many letters to piece  
11 together a claim for him -- he must set it out in his amended complaint.

12 **CONCLUSION**

13 For the foregoing reasons, the complaint is **DISMISSED WITH LEAVE TO AMEND**.  
14 The amended complaint must be filed no later than **May 31, 2016**, and must include the caption  
15 and civil case number used in this order and the words **AMENDED COMPLAINT** on the first  
16 page. Mr. Bolton is cautioned that his amended complaint will supersede existing pleadings and  
17 must be a complete statement of his claims, except that he does not need to plead again any claim  
18 the court has dismissed without leave to amend. *See Lacey v. Maricopa County*, 693 F.3d 896, 928  
19 (9th Cir. 2012) (en banc). Failure to file the amended complaint by the deadline will result in the  
20 dismissal of the action for failure to state a claim.

21 **IT IS SO ORDERED.**

22 Dated: April 29, 2016

23   
24 \_\_\_\_\_  
25 LAUREL BEELER  
26 United States Magistrate Judge  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GARY ERIC BOLTON,  
Plaintiff,

v.

STEPHEN WIEDER, et al.,  
Defendants.

Case No. 3:16-cv-01250-LB

**CERTIFICATE OF SERVICE**

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

That on April 29, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Gary Eric Bolton ID: 2120657  
2100 Napa Vallejo Highway  
Napa, CA 94558

Dated: April 29, 2016

Susan Y. Soong  
Clerk, United States District Court

By:   
Lashanda Scott, Deputy Clerk to the  
Honorable LAUREL BEELER