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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN L. DAVIS,
Plaintiff,
v.
GREG SUHR, et al.,
Defendants.

Case No. [16-cv-04487-JD](#)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, a detainee, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The complaint was dismissed with leave to amend and plaintiff has filed an amended complaint (Docket No. 22).

DISCUSSION

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

1 cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above
2 the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations
3 omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its
4 face.” *Id.* at 570. The United States Supreme Court has explained the “plausible on its face”
5 standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they
6 must be supported by factual allegations. When there are well-pleaded factual allegations, a court
7 should assume their veracity and then determine whether they plausibly give rise to an entitlement
8 to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

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

12 **LEGAL CLAIMS**

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

22 In *Wallace v. Kato*, 549 U.S. 384, 393 (2007), the Court held that the “*Heck* rule for
23 deferred accrual is called into play only when there exists ‘a conviction or sentence that has not
24 been . . . invalidated,’ that is to say, an ‘outstanding criminal judgment.’” *Id.* at 391-93 (quoting
25 *Heck*, 512 U.S. at 486-87). The *Heck* rule delays accrual only if there is an existing conviction on
26 the date the statute of limitations begins to run, which in the case of wrongful arrest or wrongful
27 imprisonment claims is when the plaintiff’s confinement is no longer without legal process, but
28 rather becomes a confinement pursuant to legal process – that is, for example, when he or she is

1 bound over by a magistrate or arraigned on charges. *Id.* at 389-90. The Court stated that the
2 contention that “an action which would impugn *an anticipated future conviction* cannot be brought
3 until that conviction occurs and is set aside” goes “well beyond *Heck*” and rejected it. *Id.* at 393
4 (italics in original). Although the Court was only considering when the statute of limitations
5 began running on a false arrest/false imprisonment claim, the discussion quoted suggests that *Heck*
6 does not apply if there is no extant conviction – for instance, if plaintiff has only been arrested or
7 charged.

8 If a plaintiff files a § 1983 false arrest claim before he or she is convicted, or files any other
9 claim related to rulings that likely will be made in a pending or anticipated criminal trial, it is
10 within the power of the district court, and accords with common practice, to stay the civil action
11 until the criminal case or the likelihood of a criminal case is ended. *Id.* at 393-94. If the plaintiff
12 is then convicted, and if the stayed civil suit would impugn that conviction, *Heck* requires
13 dismissal; otherwise, the case may proceed. *Id.* at 394.

14 When a pretrial detainee challenges conditions of his confinement, the proper inquiry is
15 whether the conditions amount to punishment in violation of the Due Process Clause of the
16 Fourteenth Amendment. *See Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979). “[T]he State does
17 not acquire the power to punish with which the Eighth Amendment is concerned until after it has
18 secured a formal adjudication of guilt in accordance with due process of law. Where the State
19 seeks to impose punishment without such an adjudication, the pertinent guarantee is the Due
20 Process Clause of the Fourteenth Amendment.” *Id.* (quoting *Ingraham v. Wright*, 430 U.S. 651,
21 671-72 n.40 (1977)).

22 The state may detain a pretrial detainee “to ensure his presence at trial and may subject him
23 to the restrictions and conditions of the detention facility so long as those conditions and
24 restrictions do not amount to punishment or otherwise violate the Constitution.” *Id.* at 536-37. If
25 a particular condition or restriction of pretrial detention is reasonably related to a legitimate
26 governmental objective it does not, without more, amount to “punishment”. *See id.* at 539; *cf.*
27 *Wagner v. County of Maricopa*, 701 F.3d 583, 589 (9th Cir. 2012) (remanding to trial court to
28 determine whether the unexplained procedure of “dressing-out” a detainee, known to be in need of

1 psychiatric treatment, from civilian clothes to jail garb, which included wearing pink underwear,
2 was punishment without legal justification when detainee believed he was being raped and
3 humiliated). For example, states must be able to take steps to maintain security and order at
4 pretrial facilities, and restraints that are reasonably related to a facility's interest in maintaining jail
5 security are not, without more, unconstitutional punishment. *See Bell v. Wolfish*, 441 U.S. at 540.

6 Plaintiff states that various San Francisco Police Officers and federal probation officials
7 conspired to have him arrested using surveillance drones and wiretaps. He also states they were
8 trying to kill him. For relief he seeks money damages. It is not clear if plaintiff has been
9 convicted of any crime, charges are currently pending, or if charges have been dismissed. The
10 amended complaint is dismissed with leave to amend to provide more information about the
11 current status of the charges against him. In addition, plaintiff must present more information on
12 how his arrest was unlawful and violated the constitution. Simply providing a few conclusory
13 allegations is insufficient. He must also describe the actions of specific defendants.

14 Plaintiff also alleges that a jail deputy turned off the lights to his cell so other inmates
15 could assault him. It is not clear if plaintiff was assaulted or what transpired. Plaintiff should
16 provide more information about this claim as well in an amended complaint. Plaintiff is reminded
17 that he must present sufficient allegations that plausibly give rise to an entitlement to relief. *Iqbal*,
18 556 U.S. at 679.

19 **CONCLUSION**

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

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

IT IS SO ORDERED.

Dated: February 6, 2017



JAMES DONATO
United States District Judge

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3 JOHN L. DAVIS,
4 Plaintiff,

5 v.

6 GREG SUHR, et al.,
7 Defendants.
8

Case No. [16-cv-04487-JD](#)

CERTIFICATE OF SERVICE

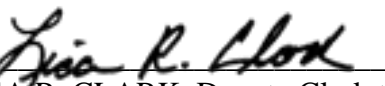
9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S.
10 District Court, Northern District of California.

11
12 That on February 6, 2017, 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 John L. Davis
16664426
18 850 Bryant Street
San Francisco, CA 94103
19

20
21 Dated: February 6, 2017

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

24
25 By: 
26 LISA R. CLARK, Deputy Clerk to the
27 Honorable JAMES DONATO
28