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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

DAVID KUHLMANN,

Plaintiff,

vs.

ADAM CHRISTIANSON, STANISLAUS  
COUNTY, DEPUTY GRADY WELCH,

Defendants.

Case No.: 14-cv-00494 KAW

ORDER DISMISSING FIRST AMENDED  
COMPLAINT WITH LEAVE TO AMEND

**I. BACKGROUND**

Plaintiff, who is represented by counsel, filed this § 1983 case on January 31, 2014, along with an application to proceed in forma pauperis. (Compl., Dkt. No. 1; Pl.'s IFP Appl., Dkt. No. 3.) He has consented to the undersigned's jurisdiction pursuant to 28 U.S.C. § 636(c). (Pl.'s Consent, Dkt. No. 4.)

The Court denied Plaintiff's initial application to proceed in forma pauperis without prejudice. (Feb. 7, 2014 Order, Dkt. No. 7.) Plaintiff filed a subsequent application, which the Court granted on March 14, 2014. (March 14, 2014 Order at 3, Dkt. No. 9.) In the order, the Court also dismissed Plaintiff's complaint with leave to amend. (Id.) The Court determined that Plaintiff's allegations were conclusory and as such, insufficient to state a claim upon which relief can be granted. (See *id.* at 2.) The Court also found that Plaintiff's conclusory statements only addressed two of Plaintiff's purported causes of action, i.e., his claims for false arrest and negligence, but did

1 not address any claims for intentional infliction of emotional distress, false imprisonment, or any  
2 other claimed violation of federal, state, or local law, which Plaintiff left unspecified in the  
3 complaint. (See *id.* at 3.)

4 Plaintiff filed a first amended complaint on April 11, 2014.<sup>1</sup> (1st Am. Compl., Dkt. No. 10.)  
5 Because the first amended complaint also fails to state a claim upon which relief can be granted, it is  
6 dismissed with leave to amend.

## 7 **II. LEGAL STANDARD**

8 Pursuant to 28 U.S.C. § 1915(e)(2), a court "shall dismiss [a] case at any time if the court  
9 determines that . . .the action . . . fails to state a claim on which relief may be granted." See Fed. R.  
10 Civ. P. 12(b)(6). Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain "a short  
11 and plain statement of the claim showing that the pleader is entitled to relief." But "a complaint  
12 must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on  
13 its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Threadbare recitals of the  
14 elements of a cause of action" and "conclusory statements" are not adequate. *Ashcroft v. Iqbal*, 556  
15 U.S. 662, 678 (2009). "The plausibility standard is not akin to a probability requirement, but it asks  
16 for more than a sheer possibility that a defendant has acted unlawfully . . . . When a complaint  
17 pleads facts that are merely consistent with a defendant's liability, it stops short of the line between  
18 possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 557) (internal  
19 citations omitted). Generally, if the court dismisses the complaint, it should grant leave to amend  
20 even if no request to amend is made "unless it determines that the pleading could not possibly be  
21 cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

## 22 **III. DISCUSSION**

23 In the amended complaint, Plaintiff, a resident of Stanislaus County, alleges that he was  
24 arrested on an alleged parole violation for sexual battery and placed in a safety cell at Stanislaus

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26 <sup>1</sup> Attached to the complaint is a certificate of service, showing that Plaintiff's counsel, John E.  
27 Stringer, served attorney Dan Farrar with a copy of the first amended complaint by mail. Given that  
28 (1) summons has not been issued in this case and (2) the Court has not issued an order indicating that  
Plaintiff's first amended complaint complies with 28 U.S.C. § 1915, it is unclear why Plaintiff's  
counsel served the first amended complaint on this individual.

1 County jail on April 19, 2013. (Id. ¶¶ 1, 2.) Plaintiff also alleges that the defendants, whom  
2 Plaintiff identifies as residents of Stanislaus County, moved Plaintiff from a safety cell to a general  
3 population cell in which known gang members were housed. (Id. ¶ 2.) He asserts that he was  
4 "forced to show his paperwork to other inmates" and severely beaten when they discovered the  
5 nature of his parole violation. (Id.) Plaintiff also claims that he was moved to another general  
6 population cell, beaten a second time, and denied medical treatment. (Id.) According to Plaintiff, he  
7 suffered a severe brain injury, as a result of which he is unemployable, unable to care for himself,  
8 and totally disabled for the remainder of his natural life. (Id. ¶¶ 3, 4.) On this basis, Plaintiff alleges  
9 various causes of action, which "include[], but [are] not limited to, general negligence and  
10 intentional infliction of emotional distress and [a] violation of Title 42 Section 1983 of the United  
11 States Code, and California State Law, Code, and Statutes." (Compl. at 2.)<sup>2</sup>

12 **A. Plaintiff has not sufficiently alleged a claim under 42 U.S.C. § 1983.**

13 "Section 1983 provides a cause of action against any person who, under the color of state  
14 law, abridges rights unambiguously created by the Constitution or laws of the United States. . . . [It]  
15 is not itself a source of substantive rights, but merely provides a method for vindicating federal  
16 rights elsewhere conferred." *Crowley v. Nevada*, 678 F.3d 730 (9th Cir. 2012) (internal quotations  
17 and citations omitted). Thus, to state a claim under § 1983, a plaintiff must allege two elements: (1)  
18 that a right secured by the Constitution or laws of the United States was violated, and (2) that the  
19 alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487  
20 U.S. 42, 48 (1988).

21 Plaintiff describes his claims as arising "under the Constitution of the United States,  
22 Fourteenth Amendment, Due Process and Equal Protection Clauses . . . ." (Compl. at 2.) He also  
23 asserts that this action is brought "under Title 42 Section 1983 of the United States Code in that  
24 Plaintiff's civil rights were violated by the actions of Defendants in placing Plaintiff in harms [sic]  
25 way under color of law." (Id. ¶ 5.) Plaintiff's complaint does not contain any substantive  
26 allegations concerning the basis for these claims, rather these assertions are contained in discrete

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27 <sup>2</sup> Only two causes of action are captioned in the complaint: general negligence and intentional  
28 infliction of emotional distress. 1st Am. Compl. ¶¶ 5, 6.

1 sections of the complaint, such as the introduction, the jurisdictional statement, and the sections of  
2 the complaint captioned "CAUSE OF ACTION-General Negligence" and "Exemplary Damages  
3 Attachment." (See, e.g., Compl. at 1, 2, 4, 5.) The mere assertions that Defendants violated  
4 Plaintiff's civil rights by placing him "in harms [sic] way" or because Defendants acted with malice  
5 are insufficient to state a plausible claim for relief under § 1983. See *Iqbal*, 556 U.S. at 678  
6 ("Threadbare recitals of the elements of a cause of action" and "conclusory statements" are not  
7 adequate. ").

8 Plaintiff has, therefore, failed to state a viable claim under § 1983.

9 **B. Plaintiff's claims for negligence and intentional infliction of emotional distress**  
10 **fail.**

11 With certain exceptions, a plaintiff asserting state law tort claims for money or damages  
12 against local public entities must comply with the claim presentation requirements set forth in the  
13 California Tort Claims Act ("CTCA"). Cal. Gov't Code § 905. The CTCA provides that a party  
14 cannot file an action for money or damages against a local public agency until a written claim has  
15 been filed with and rejected by the defendant agency. *Id.*; see *City of San Jose v. Superior Court*, 12  
16 Cal. 3d 447 (1974). This is a condition precedent to maintaining an action against local public  
17 entities and "failure to file a claim is fatal to the cause of action." *City of San Jose*, 12 Cal. 3d at  
18 454; *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 627 (9th Cir. 1988). Accordingly, a party  
19 asserting a cause of action that falls within the CTCA must allege, in the complaint, compliance with  
20 its procedural requirements. *Karim-Panahi*, 839 F.3d at 627.

21 In his first amended complaint, Plaintiff prays for "[g]eneral, compensatory, special and  
22 exemplary damages against all Defendants" in an amount "to be determined by the Court and/or  
23 jury." (Compl. at 6.) Absent from the complaint, however, is any allegation that Plaintiff has  
24 complied with the CTCA's presentation requirements. This is fatal Plaintiff's state law claims for  
25 negligence and intentional infliction of emotional distress.

26 The deficiencies discussed above warrant dismissal of Plaintiff's complaint in its entirety.  
27 See *Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 678. The Court, however, grants Plaintiff leave to  
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amend the complaint because these deficiencies may be cured through amendment. See Lopez, 203 F.3d at 1127.

**IV. CONCLUSION**

For the reasons stated above, Plaintiff's first amended complaint is dismissed with leave to amend. Plaintiff shall file a second amended complaint within 30 days of this order. The second amended complaint shall properly identify the legal and factual basis for Plaintiff's claims. Failure to file a second amended complaint within 30 days of this order may result in dismissal of this action for failure to prosecute.

IT IS SO ORDERED.

DATE: May 09, 2014

  
KANDIS A. WESTMORE  
United States Magistrate Judge