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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ALLEN HAMMLER,

12 Plaintiff,

13 v.

14 F. AVILES,

15 Defendant.
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Case No.: 17-CV-1185-AJB(WVG)

**REPORT AND
RECOMMENDATION ON
DEFENDANT’S MOTION TO
DISMISS COUNT THREE**

[ECF No. 6.]

18 Plaintiff Allen Hammler, a state prisoner proceeding *pro se* and *in forma pauperis*,
19 has filed a civil rights action seeking relief under the Civil Rights Act, 42 U.S.C. § 1983.
20 Defendant F. Aviles has filed a motion to dismiss Count 3 of Plaintiff’s Complaint. (ECF
21 No. 6.) For the reasons that follow, the Court RECOMMENDS that Defendant’s motion to
22 dismiss be GRANTED with leave to amend.

23 **I. BACKGROUND**

24 In 2016, Plaintiff was housed at the Richard J. Donovan Correctional Facility
25 (“RJD”) in San Diego, California. Plaintiff claims that on November 7, 2016, Defendant
26 “slammed [Plaintiff] . . . head first against the concrete,” which resulted in injuries to his
27 head and shoulder. (ECF No. 1 at 6.) Plaintiff alleges that after this incident, he filed a staff
28 complaint against Defendant at RJD. (ECF No. 1 at 7.) Plaintiff alleges that Defendant then

1 filed a false misconduct report that led to Plaintiff’s disciplinary hearing, which ultimately
2 resulted in Plaintiff being placed on psychotropic medication. (ECF No. 1 at 9.)

3 Plaintiff asserts three causes of action arising from this incident at RJD:
4 (1) Defendant’s use of unnecessary and excessive force constitutes “cruel and unusual
5 punishments” in violation of the Eighth Amendment; (2) after Plaintiff filed a complaint
6 concerning this matter, Defendant retaliated against Plaintiff, violating Plaintiff’s rights
7 under the First Amendment; and (3) Defendant violated Plaintiff’s due-process rights under
8 the Fourteenth Amendment by filing false reports about the incident. (ECF No. 1.)

9 Defendant now moves to dismiss Count 3 of the Complaint on the grounds that
10 Plaintiff has failed to state a claim.

11 II. LEGAL STANDARD

12 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the
13 defense that the complaint “fail[s] to state a claim upon which relief can be granted,”
14 generally referred to as a motion to dismiss. Fed. R. Civ. P. 12(b)(6). The Court evaluates
15 whether a complaint states a cognizable legal theory and sufficient facts in light of Federal
16 Rule of Civil Procedure 8(a), which requires a “short and plain statement of the claim
17 showing that the pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed
18 factual allegations,’ . . . it [does] demand[] more than an unadorned, the-defendant-
19 unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
20 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s
21 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels
22 and conclusions, and a formulaic recitation of the elements of a cause of action will not
23 do.” *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). “Nor
24 does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual
25 enhancement.’” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at 557).

26 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
27 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
28 *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible

1 when the facts pled “allow . . . the court to draw the reasonable inference that the defendant
2 is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). That is not to
3 say that the claim must be probable, but there must be “more than a sheer possibility that a
4 defendant has acted unlawfully.” *Id.* Facts “‘merely consistent with’ a defendant’s liability”
5 fall short of a plausible entitlement to relief. *Id.* (quoting *Twombly*, 550 U.S. at 557).
6 Further, the Court need not accept as true “legal conclusions” contained in the complaint.
7 *Id.* This review requires context-specific analysis involving the Court’s “judicial
8 experience and common sense.” *Id.* at 678 (citation omitted). “[W]here the well-pleaded
9 facts do not permit the court to infer more than the mere possibility of misconduct, the
10 complaint has alleged—but it has not ‘show[n]’—‘that the pleader is entitled to relief.’”
11 *Id.* The Court will grant leave to amend unless it determines that no modified contention
12 “consistent with the challenged pleadings . . . [will] cure the deficiency.” *DeSoto v. Yello*
13 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (citation omitted).

14 Where, as here, a plaintiff appears *pro se* in a civil rights suit, the Court also must
15 be careful to construe the pleadings liberally and afford the plaintiff any benefit of the
16 doubt. *Garmon v. Cty. of L.A.*, 828 F.3d 837, 846 (9th Cir. 2016). The rule of liberal
17 construction is “particularly important in civil rights cases.” *Ferdik v. Bonzelet*, 963 F.2d
18 1258, 1261 (9th Cir. 1992).

19 A *pro se* litigant is entitled to notice of the deficiencies in the complaint and an
20 opportunity to amend unless the complaint’s deficiencies cannot be cured by amendment.
21 *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). The plaintiff must also be given some
22 notice of the complaint’s deficiencies prior to dismissal. *See Cato v. United States*, 70 F.3d
23 1103, 1106 (9th Cir. 1995); *see also Parkes v. Cox*, 508 Fed. Appx. 649, 650 (9th Cir. Feb.
24 14, 2013) (citing *Cato*) (unpublished).

25 III. DISCUSSION

26 A. Plaintiff Has Failed to State a Claim in Count Three

27 When Plaintiff’s allegations are viewed in the broadest possible light, he appears to
28 be alleging that Defendant violated his Fourteenth Amendment right to Due Process

1 because Defendant filed a false California Department of Corrections and Rehabilitation
2 (“CDC”) Rules Violation Report and Crime Incident Report, and these false reports were
3 relied upon to authorize the CDC to administer antipsychotic medication to Plaintiff. (ECF
4 No. 1, 9.)

5 The Due Process Clause of the Fourteenth Amendment prohibits states from
6 “depriving any person of life, liberty, or property, without the due process of law.” U.S.
7 Const. amend. XIV. Prisoners may claim the protections of the Due Process Clause and
8 are not to be deprived of life, liberty, or property without due process of law. *Wolff v.*
9 *McDonnell*, 418 U.S. 539, 556 (1974); *Haines v. Kerner*, 404 U.S. 519 (1972). Forced
10 administration of psychotropic drugs trigger the protections of the Due Process Clause.
11 *Chappell v. Mandeville*, 706 F.3d 1052, 1063 (9th Cir. 2013). The Supreme Court has held
12 that, “given the requirements of the prison environment, the Due Process Clause permits
13 the State to treat a prison inmate who has a serious mental illness with antipsychotic drugs
14 against his will, if the inmate is dangerous to himself or others and the treatment is in the
15 inmate's medical interest.” *Washington v. Harper*, 494 U.S. 210, 227 (1990).

16 Moreover, with respect to Plaintiff’s claim that Defendant falsified reports, as long
17 as a prisoner is afforded procedural due process, allegations of fabricated evidence or
18 testimony fail to state a claim under section 1983. *See Smith v. Mensinger*, 293 F.3d 641,
19 653-54 (3d Cir. 2002); *Sprouse v. Babcock*, 870 F.2d 450, 452 (8th Cir. 1989) (claims
20 based on the falsity of charges, standing alone, do not state constitutional claims); *Garrott*
21 *v. Glebe*, 600 Fed. Appx. 540, 541-42 (9th Cir. 2015); *Timberland v. Mascarenas*, No.
22 1:16-cv-922-LJO-GSA-PC, 2018 U.S. Dist. LEXIS 31787, at *15 (E.D. Cal. Feb. 27,
23 2018); *Smith v. Ahmed*, No. C-15-03476-MEJ(PR), 2015 U.S. Dist. LEXIS 154051, at *7
24 (N.D. Cal. Nov. 13, 2015). To satisfy these procedural protections in the context of forced
25 administration of psychotropic drugs, the decision to involuntarily medicate an inmate
26 satisfies due process when facilitated by an administrative review. *Washington v. Harper*,
27 494 U.S. 210, 233 (1990). Procedural due process is satisfied if the inmate is provided with
28 notice, the right to be present at an adversarial hearing, and the right to be present and

1 cross-examine witnesses. *Id.* at 235. Appointment of counsel is not required; the provision
2 of a lay advisor who understands the psychiatric issues involved is sufficient protection.
3 *Id.* at 236.

4 Here, Plaintiff acknowledged he received a hearing under California Penal Code
5 § 2602 on January 11, 2017 before the decision to medicate him with antipsychotic
6 medication against his will.¹ (ECF No. 1, at 9.) However, he does not allege any procedural
7 violations relating to these hearings. Absent any allegations of procedural violations, he
8 has not stated a claim under the Due Process Clause.

9 Plaintiff cites *Harmon v. St. Louis Cty.*, No. 4:08CV226SNLJ, 2009 U.S. Dist.
10 LEXIS 27726, at *10, 2009 WL 880024, at *3 (E.D. Mo. Mar. 31, 2009) for the proposition
11 that an “officer’s falsification of a report . . . constitutes a due process violation when the
12 alleged falsified report leads to an unconstitutional deprivation of life, liberty, or property.”
13 (Doc. No. 9 at 3-4.)² He contends a due process violation occurred here because Aviles’s
14 alleged falsified report led to Plaintiff “being deprived of the most important [r]ight of all,
15 to have control over his own body and mind.” (*Id.* at 3-4.) However, while the key word in
16 the *Hamlon* quotation is “unconstitutional,” Plaintiff overlooks the middle step in the
17 process by which he was ordered medicated: the administrative hearing he admits he
18 received before being medicated. So long as he was provided procedural protections during
19 that hearing, a viable Due Process claim does not lie because the alleged deprivation was
20 not an unconstitutional deprivation. Plaintiff’s claim here fails because the Complaint lacks
21 allegations of inadequate procedural protections during the hearing.

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25 ¹ Section 2602 sets forth the procedures for involuntary medication administration. These
26 procedures include an administrative hearing.

27 ² The actual language in *Harmon* follows: “[An inaccurate police report] *only* constitutes a
28 due process violation when the alleged falsified report leads to an unconstitutional
deprivation of life, liberty, or property.” (emphasis added).

1 Based on the foregoing, Defendant’s motion to dismiss Count 3 should be
2 GRANTED.

3 **B. Leave to Amend**

4 Under Federal Rule of Civil Procedure 15(a)(2), leave to amend shall be freely given
5 when justice so requires. “In deciding whether justice requires granting leave to amend,
6 factors to be considered include the presence or absence of undue delay, bad faith, dilatory
7 motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to
8 the opposing party and futility of the proposed amendment.” *Moore v. Kayport Package*
9 *Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989) (citations omitted).

10 Here, there has been no undue delay, bad faith, or dilatory motive. It does not appear
11 there would be any undue prejudice to Defendant. There have been no repeated failures to
12 cure deficiencies by previous amendments. This would be Plaintiff’s first attempt to amend
13 Count 3. Thus, the only basis for denying leave to amend would be the futility of
14 amendment. However, leave to amend would not be futile because, as noted above,
15 additional allegations regarding the disciplinary hearing could cure the deficiencies in
16 Count 3. Whether such facts actually exists such that Plaintiff will be able to allege them
17 is unknown. However, Plaintiff should be granted at least the opportunity to add additional
18 curative facts *if* they exist. Given that all the other factors weigh in favor of amendment
19 and it is not clear that amendment would be futile, the Court RECOMMENDS Plaintiff be
20 granted leave to file an amended complaint for the limited purpose of amending Count 3.

21 **IV. CONCLUSION**

22 Based on the foregoing, this Court respectfully RECOMMENDS that Defendant’s
23 motion to dismiss Count Three of the Complaint be GRANTED with leave to amend.

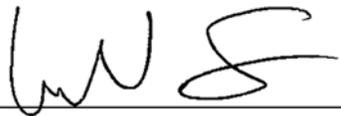
24 This Report and Recommendation is submitted to the United States District Judge
25 assigned to this case, pursuant to the provisions of 28 U.S.C § 636(b)(1) and Federal Rule
26 of Civil Procedure 72(b).

1 **IT IS ORDERED** that **no later than April 27, 2018**, any party to this action may
2 file written objection with the Court and serve a copy on all parties. The document shall be
3 captioned "Objections to Report and Recommendation."

4 **IT IS FURTHER ORDERED** that any reply to the objections shall be filed with
5 the court and served on all parties **no later than May 11, 2018**. The parties are advised
6 that failure to file objections within the specific time may waive the right to raise those
7 objections on the appeal.

8 **IT IS SO ORDERED.**

9 DATED: March 12, 2018

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13 Hon. William V. Gallo
14 United States Magistrate Judge
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