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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LAWRENCE EUGENE GOMES,
Plaintiff,
v.
DAVID M. MATHIS, MD, et al.,
Defendants.

Case No. CV 17-7022 SVW (SS)
MEMORANDUM DECISION AND ORDER
DISMISSING COMPLAINT WITH
LEAVE TO AMEND

I.

INTRODUCTION

Lawrence Eugene Gomes ("Plaintiff"), a California state prisoner proceeding pro se, has filed a complaint alleging violations of his civil rights pursuant to 42 U.S.C. § 1983. ("Complaint," Dkt. No. 1). Congress mandates that district courts perform an initial screening of complaints in civil actions where a prisoner seeks redress from a governmental entity or employee. 28 U.S.C. § 1915A(a). This Court may dismiss such a complaint, or any portion, before service of process if it concludes that the complaint (1) is frivolous or malicious, (2) fails to state a claim

1 upon which relief can be granted, or (3) seeks monetary relief from
2 a defendant who is immune from such relief. 28 U.S.C. § 1915A(b) (1-
3 2); see also Lopez v. Smith, 203 F.3d 1122, 1126-27 & n.7 (9th Cir.
4 2000) (en banc). For the reasons stated below, the Complaint is
5 DISMISSED with leave to amend.¹

6
7 **II.**

8 **ALLEGATIONS OF THE COMPLAINT**

9
10 Plaintiff asserts claims of deliberate indifference to serious
11 medical needs against the following defendants in their individual
12 and official capacities: two state prison physicians, David M.
13 Mathis and Mariana Lotersctain; J. Clark Kelso, federal court-
14 appointed Receiver for the California prison medical health care
15 system ("Receiver"); and the "SACCO/WICC Unit"² of the California
16 Department of Corrections and Rehabilitation ("CDCR"). (Complaint
17 at 3-9). Plaintiff alleges that the physicians, Dr. Mathis and
18 Dr. Lotersctain, failed to provide adequate medical treatment for
19 a variety of conditions and injuries. (Id. at 5-6). This includes
20 alleged injuries caused when a corrections officer raped Plaintiff
21 in an Arizona prison, where he was housed pursuant to the Western
22 Interstate Corrections Compact. (See id.). Plaintiff also claims
23 that the Receiver and the SACC/WICC Unit failed to intervene and
24 help him when he was being raped in the Arizona facility. (Id. at

25
26 ¹ Magistrate judges may dismiss a complaint with leave to amend
27 without approval of the district judge. See McKeever v. Block,
28 932 F.2d 795, 798 (9th Cir. 1991).

² "SACCO" apparently refers to the Sacramento Control Office,
and "WICC" stands for the "Western Interstate Corrections Compact."

1 7-8). From each defendant, Plaintiff seeks \$100,000 in
2 compensatory damages, \$100,000 in punitive damages and \$100,000 in
3 "nominal damages," in addition to \$100,000 for "past or future
4 medical costs." (Id. at 9).

5
6 **III.**

7 **DISCUSSION**

8
9 Plaintiff's Complaint is defective because it contains
10 improper defendants. To gain relief under section 1983, a
11 plaintiff must plead that a "person" acting under color of state
12 law violated his federal constitutional or statutory rights.
13 Crumpton v. Gates, 947 F.2d 1418, 1420 (9th Cir. 1991). State
14 agencies and state officials are not considered "persons" under
15 section 1983. Flint v. Dennison, 488 F.3d 816, 824-25 (9th Cir.
16 2007). A court-appointed receiver, on the other hand, can be sued
17 in his official capacity for his acts in conducting the
18 receivership, but he cannot be sued in his individual capacity for
19 such acts. Med. Dev. Int'l v. Cal. Dep't of Corr. & Rehab., 585
20 F.3d 1211, 1213, 1219 (9th Cir. 2009).

21
22 Accordingly, Plaintiff cannot maintain his claims against the
23 state prison physicians in their official capacities or the
24 "SACCO/WICC Unit" of the CDCR. He also cannot sue the Receiver in
25 his individual capacity. These defects warrant dismissal of the
26 Complaint under 28 U.S.C. § 1915A(b). Because an amended pleading
27 may cure these defects, the Court dismisses the Complaint with
28 leave to amend. See Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir.

1 2012) (a court must grant a pro se litigant leave to amend his
2 defective complaint unless "it is absolutely clear that the
3 deficiencies of the complaint could not be cured by amendment")
4 (citation and internal quotation marks omitted).

5
6 **IV.**

7 **CONCLUSION**

8
9 For the reasons stated above, the Complaint is DISMISSED with
10 leave to amend. If Plaintiff still wishes to pursue this action,
11 he is granted **thirty (30) days** from the date of this Memorandum
12 and Order in which to file a First Amended Complaint. In any
13 amended complaint, the Plaintiff shall cure the defects described
14 above. **Plaintiff shall not include new defendants or new**
15 **allegations that are not reasonably related to the claims asserted**
16 **in the original Complaint.** The First Amended Complaint, if any,
17 shall be complete in itself and shall bear both the designation
18 "First Amended Complaint" and the case number assigned to this
19 action. It shall not refer in any manner to any previously filed
20 complaint in this matter.

21
22 In any amended complaint, Plaintiff should confine his
23 allegations to those operative facts supporting each of his claims.
24 Plaintiff is advised that pursuant to Federal Rule of Civil
25 Procedure 8(a), all that is required is a "short and plain statement
26 of the claim showing that the pleader is entitled to relief."
27 **Plaintiff is strongly encouraged to utilize the standard civil**
28 **rights complaint form when filing any amended complaint, a copy of**

1 **which is attached.** In any amended complaint, Plaintiff should
2 clearly identify the nature of each separate legal claim, the
3 Defendant or Defendants he believes are liable for each claim, and
4 the facts showing what each Defendant did to cause Plaintiff harm.
5 Plaintiff is strongly encouraged to keep his statements concise
6 and to omit irrelevant details. It is not necessary for Plaintiff
7 to cite case law, include legal argument, or attach exhibits at
8 this stage of the litigation. Plaintiff is also advised to omit
9 any claims for which he lacks a sufficient factual basis.
10

11 **Plaintiff is explicitly cautioned that failure to timely file**
12 **a First Amended Complaint, or failure to correct the deficiencies**
13 **described above, will result in a recommendation that this action**
14 **be dismissed with prejudice for failure to prosecute and obey court**
15 **orders pursuant to Federal Rule of Civil Procedure 41(b).**
16 **Plaintiff is further advised that if he no longer wishes to pursue**
17 **this action, he may voluntarily dismiss it by filing a Notice of**
18 **Dismissal in accordance with Federal Rule of Civil Procedure**
19 **41(a)(1). A form Notice of Dismissal is attached for Plaintiff's**
20 **convenience.**
21

22 DATED: January 5, 2017
23

24 /s/
25 _____
26 SUZANNE H. SEGAL
27 UNITED STATES MAGISTRATE JUDGE
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NOTICE

THIS DECISION IS NOT INTENDED FOR PUBLICATION IN LEXIS, WESTLAW OR ANY OTHER LEGAL DATABASE.