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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SUMPTER LOVELLE PORTER,
Plaintiff,

v.

LANCASTER STATE PRISON, et al.,
Defendants.

Case No. CV 18-0107 CJC (SS)

**MEMORANDUM DECISION AND ORDER
DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

I.

INTRODUCTION

On January 5, 2018, Sumpter Lovelle Porter ("Plaintiff"), a California state prisoner proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. ("Complaint" or "Compl.," 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 thereof, before service of process if the complaint (1) is

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

7
8 **II.**

9 **ALLEGATIONS OF THE COMPLAINT**

10
11 Plaintiff sues (1) California State Prison-Los Angeles County
12 at Lancaster ("CSP-LAC"); (2) Warden Asuncion²; (3) Associate
13 Warden Lewandowski; (4) Correctional Officer Jones;
14 (5) Correctional Officer Cortez; and (6) "Medical Staff & Mental
15 Health Worker & Doctors." (Compl. at 1). Plaintiff does not state
16 whether he is attempting to sue the individual defendants in their
17 individual or official capacity.

18
19 The Complaint is captioned as a "Declaration of Sumpter L.
20 Porter" and is signed by Plaintiff under penalty of perjury. (Id.

21 _____
22 ¹ A magistrate judge may dismiss a complaint with leave to amend
23 without the approval of a district judge. See McKeever v. Block,
24 932 F.2d 795, 798 (9th Cir. 1991).

25 ² The Complaint identifies the Warden's last name as "Suncion."
26 The Court takes judicial notice that Debbie Asuncion is the Warden
27 of CSP-LAC, as reflected on the California Department of
28 Corrections and Rehabilitation ("CDCR") website, and will refer to
her by that name. See http://www.cdcr.ca.gov/Facilities_Locator/LAC.html; see also In re Yahoo Mail Litig., 7 F. Supp. 3d 1016,
1024 (N.D. Cal. 2014) (court may take judicial notice of
information on "publicly accessible websites" not subject to
reasonable dispute).

1 at 1-3 (continuous pagination)). The Complaint attaches as
2 exhibits the declarations of five other CSP-LAC inmates who state,
3 also under penalty of perjury, that the statements in Plaintiff's
4 declaration are "true and correct," (id. at 4-8), and several
5 documents, including prison grievances, health care services
6 request forms, inventory sheets, and an Administrative Segregation
7 Unit ("Ad Seg") Placement Notice. (Id. at 9-24).

8
9 Although very brief, the Complaint is not entirely clear.
10 Plaintiff appears to allege that he was placed in Ad Seg on October
11 10, 2017. (Id. at 2). On December 6, 2017, Plaintiff was assaulted
12 by unidentified "prison guards" and wrongfully placed on suicide
13 watch by "medical staff" for a 24-hour hold. (Id.). While
14 Plaintiff was on suicide watch, property was taken from his cell
15 but was not inventoried. (Id. at 2-3). When Plaintiff was released
16 from suicide watch and returned to his cell, he noticed that a
17 number of items were missing.³ (Id. at 3).

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22
23 ³ Plaintiff does not identify what the missing property was in the
24 body of the Complaint, but a grievance dated December 11, 2017
25 attached as an exhibit to the Complaint states that the "stolen
26 property" includes, among other things, an address book,
27 headphones, legal work, prayer oil, glasses, two bags of coffee,
28 two bars of soap, two deodorants, one toothpaste, thirty stamps, a
canteen worth 25 dollars, and a full set of dentures. (Id. at 11).
The same grievance also appears to complain that when Plaintiff
was taken to suicide watch, staff broke his prayer beads, cut off
his "thermal top and bottom," and removed his knee brace. (Id.).

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III.

DISCUSSION

Under 28 U.S.C. § 1915A(b), the Court must dismiss the Complaint due to pleading defects. However, the Court must grant a pro se litigant leave to amend his defective complaint unless "it is absolutely clear that the deficiencies of the complaint could not be cured by amendment." Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012) (citation and internal quotation marks omitted). For the reasons discussed below, it is not "absolutely clear" that at least some of the defects of Plaintiff's Complaint could not be cured by amendment. The Complaint is therefore DISMISSED with leave to amend.

A. The Complaint Violates Federal Rule of Civil Procedure 8

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain "'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)). Rule 8 may be violated when a pleading "says too little," and "when a pleading says too much." Knapp v. Hogan, 738 F.3d 1106, 1108 (9th Cir. 2013) (emphasis in original). Here, the Complaint says too little.

\\
\\

1 To state a claim under § 1983, "a plaintiff must allege the
2 violation of a right secured by the Constitution . . . committed
3 by a person acting under color of state law." West v. Atkins, 487
4 U.S. 42, 48 (1988). The Complaint violates Rule 8 because Plaintiff
5 does not clearly identify the nature of each of the legal claims
6 he is bringing, the specific facts giving rise to each claim, or
7 the specific Defendant or Defendants against whom each claim is
8 brought. Without more specific information, Defendants cannot
9 respond to the Complaint. See Cafasso, U.S. ex rel. v. Gen.
10 Dynamics C4 Sys., Inc., 637 F.3d 1047, 1058 (9th Cir. 2011) (a
11 complaint violates Rule 8 if a defendant would have difficulty
12 understanding and responding to the complaint).

13
14 Moreover, because Plaintiff's verification of his Complaint
15 under oath is sufficient to attest to the truth of the matters
16 asserted, the declarations by other inmates are unnecessary. In
17 addition, because Plaintiff is not required to provide evidence
18 supporting his claims at this stage of the litigation, the exhibits
19 attached to the Complaint are similarly unnecessary. Finally, the
20 Complaint must state what relief Plaintiff is seeking by this
21 action. Accordingly, the Complaint is dismissed, with leave to
22 amend.

23
24 **B. CSP-LAC Is An Improper Defendant**

25
26 The Eleventh Amendment bars suits for money damages against
27 states and their agencies under section 1983. See Howlett v. Rose,
28 496 U.S. 356, 365 (1990); Brown v. Cal. Dep't of Corr., 554 F.3d

1 747, 752 (9th Cir. 2009) ("California has not waived its Eleventh
2 Amendment immunity with respect to claims brought under § 1983 in
3 federal court."); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
4 1989) (dismissal of civil rights action "as to the Department of
5 Prisons was proper" because "[t]he Nevada Department of Prisons,
6 as a state agency, clearly was immune from suit under the Eleventh
7 Amendment"). Because the CDCR is a state agency, it is entitled
8 to Eleventh Amendment immunity and CSP-LAC is an improper Defendant
9 in this suit. However, a plaintiff may seek monetary damages under
10 section 1983 from state employees in their individual capacity.
11 See Adler v. Lewis, 675 F.2d 1085, 1098 (9th Cir. 1982) ("State
12 officials must be sued in their individual capacity in an action
13 for monetary damages.").

14
15 **C. Plaintiff Fails To State A Claim Against The Individual**
16 **Defendants**

17
18 To establish a civil rights violation, a plaintiff must show
19 either the defendant's direct, personal participation in the
20 constitutional violation, or some sufficient causal connection
21 between the defendant's conduct and the alleged violation. See
22 Starr v. Baca, 652 F.3d 1202, 1205-06 (9th Cir. 2011).

23
24 **1. The Warden And Associate Warden**

25
26 Government officials may not be held liable under section 1983
27 simply because their subordinates engaged in unconstitutional
28 conduct. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). Where

1 a plaintiff names a supervisor as a defendant but does not allege
2 that the supervisor directly participated in the constitutional
3 violation, a "sufficient causal connection" to the violation may
4 be shown where the supervisor "set 'in motion a series of acts by
5 others, or knowingly refused to terminate [such acts], which he
6 knew or reasonably should have known, would cause others to inflict
7 the constitutional injury.'" Levine v. City of Alameda, 525 F.3d
8 903, 907 (9th Cir. 2008) (quoting Larez v. City of Los Angeles,
9 946 F.2d 630, 646 (9th Cir. 1991)); see also Preschooler II v.
10 Clark County Bd. of Trustees, 479 F.3d 1175, 1183 (9th Cir. 2007)
11 (a supervisor may be held accountable only "for his own culpable
12 action or inaction in the training, supervision, or control of his
13 subordinates, for his acquiescence in the constitutional
14 deprivations of which the complaint is made, or for conduct that
15 showed a reckless or callous indifference to the rights of
16 others").

17
18 Plaintiff names the Warden and Associate Warden as Defendants,
19 but the Complaint does not include any allegation stating what
20 Plaintiff believes they did or did not do, or identify any
21 constitutional right that was violated by their purported actions.
22 The Warden and Associate Warden are not liable under section 1983
23 simply because they run CSP-LAC and Plaintiff believes that someone
24 at the prison violated his rights. Accordingly, Plaintiff's claims
25 against the Warden and Associate Warden are dismissed, with leave
26 to amend. Plaintiff is expressly cautioned that he must not allege
27 claims without a legal and factual basis.

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2. Correctional Officers Jones And Cortez

The caption of the Complaint names Correctional Officers Jones and Cortez as Defendants. However, there are no factual allegations in the body of the Complaint stating what Plaintiff believes Jones and Cortez did (or did not do), or explaining why their actions violated his civil rights. Without more specific allegations, Plaintiff has not plausibly pled that these Defendants were personally involved in violating his rights or that their actions had any causal connection to the purported constitutional violations. Accordingly, Plaintiff's claims against Jones and Cortez are dismissed with leave to amend.

3. Unnamed Health Care Providers

Plaintiff also sues "Medical Staff & Mental Health Worker & Doctor," none of whom he identifies by name. Generally, courts do not favor actions against "unknown" defendants. Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999). However, a plaintiff may sue unnamed defendants when the identity of the alleged defendants is not known before filing the complaint. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). If that is the case, a court gives the plaintiff "the opportunity through discovery to identify unknown defendants, unless it is clear that discovery would not uncover the identities." Id. A plaintiff must diligently pursue discovery to learn the identity of unnamed defendants.

1 Here, however, the claims against the unnamed Defendants must
2 be dismissed because the Complaint fails to state what each of
3 these Defendants did in their individual capacity to violate
4 Plaintiff's rights. To state a claim against more than one unnamed
5 Defendant, Plaintiff must identify each Doe Defendant as "Doe No.
6 1, Doe No. 2," etc., in the body of the Complaint and show how each
7 Defendant individually participated in the alleged constitutional
8 violations, whether or not Plaintiff knows the Defendant's name.
9 Accordingly, the Complaint must be dismissed, with leave to amend.
10

11 **D. Plaintiff Fails To State A Claim Relating To His Placement On**
12 **Suicide Watch**

13
14 As noted above, the Complaint attempts to sue various unnamed
15 health care providers and alleges that medical staff "made the
16 wrong call" by placing him on suicide watch. (Compl. at 2). It
17 is unclear whether Plaintiff is attempting to allege that that his
18 24-hour placement on suicide watch violated his Fourteenth
19 Amendment due process rights or his Eighth Amendment right to be
20 free from cruel and unusual punishment. Whatever the intended
21 constitutional basis, these claims fail.
22

23 **1. Fourteenth Amendment**

24
25 The Due Process Clause protects prisoners from deprivation of
26 life, liberty or property without due process of law. Serra v.
27 Lappin, 600 F.3d 1191, 1196 (9th Cir. 2010); Wolff v. McDonnell,
28 418 U.S. 539, 556 (1974). However, "lawfully incarcerated persons

1 retain only a narrow range of protected liberty interests.” Hewitt
2 v. Helms, 459 U.S. 460, 467 (1983). “[A]s long as the conditions
3 or degree of confinement to which the prisoner is subjected is
4 within the sentence imposed upon him and is not otherwise violative
5 of the Constitution, the Due Process Clause does not in itself
6 subject an inmate’s treatment by prison authorities to judicial
7 oversight.” Chappell v. Mandeville, 706 F.3d 1052, 1063 (9th Cir.
8 2013) (quoting Montanye v. Haymes, 427 U.S. 236, 242 (1976)).
9

10 The Due Process clause does not directly confer a liberty
11 interest in avoiding a transfer to more adverse confinement
12 conditions. Wilkinson v. Austin, 545 U.S. 209, 221 (2005) (citing
13 Meachum v. Fano, 427 U.S. 215, 224–25 (1976)); Anderson v. County
14 of Kern, 45 F.3d 1310, 1315 (9th Cir. 1995) (“[T]here is no liberty
15 interest in remaining in the general population.”). However, an
16 inmate may possess a state-created liberty interest when his
17 confinement “imposes an atypical and significant hardship . . . in
18 relation to the ordinary incidents of prisoner life.” Sandin v.
19 Conner, 515 U.S. 472, 484 (1995); Chappell, 706 F.3d at 1064
20 (quoting same).
21

22 To determine whether a restraint is an atypical and
23 significant hardship, the court considers “1) whether the
24 challenged condition ‘mirrored those conditions imposed upon
25 inmates in administrative segregation and protective custody,’ and
26 thus comported with the prison’s discretionary authority; 2) the
27 duration of the condition, and the degree of restraint imposed;
28 and 3) whether the state’s action will invariably affect the

1 duration of the prisoner's sentence." Ramirez v. Galaza, 334 F.3d
2 850, 861 (9th Cir. 2003) (quoting Sandin, 515 U.S. at 486-87). For
3 example, the Supreme Court has determined that while "[m]any of
4 the restrictions on a prisoner's freedom of action [at a mental
5 health care facility] might not constitute the deprivation of a
6 liberty interest retained by a prisoner, . . . the stigmatizing
7 consequences of a transfer to a mental hospital for involuntary
8 psychiatric treatment, coupled with the subjection of the prisoner
9 to mandatory behavior modification treatment for mental illness,
10 constitute the kind of deprivations of liberty that requires
11 procedural protections." Vitek v. Jones, 445 U.S. 480, 494 (1980).

12
13 To the extent that Plaintiff is attempting to assert a due
14 process claim arising from his 24-hour placement on suicide watch,
15 the claim fails. Plaintiff does not explain what the conditions
16 were while he was on suicide watch, how the conditions differed
17 from the general population, why they constituted an "atypical and
18 significant hardship," and whether he was subjected to mandatory,
19 involuntary treatment while under observation. Accordingly, the
20 Complaint must be dismissed, with leave to amend. See Trujillo v.
21 Sherman, 2017 WL 1549937, at *6 (E.D. Cal. May 1, 2017); (prisoner-
22 plaintiff's allegation that he was "placed on a 24-hour suicide
23 watch without blankets or clothes does not meet the extreme
24 requirements necessary to state a conditions of confinement claim
25 under the Due Process Clause"); Jacobs v. Sullivan, 2010 WL
26 1342368, at *8 (E.D. Cal. Apr. 5, 2010) (plaintiff failed to state
27 due process claim arising from placement on suicide watch where he
28 did not describe the conditions at the medical facility or explain

1 how being placed on suicide watch was an atypical and significant
2 hardship).

3
4 **2. Eighth Amendment**

5
6 It is also possible that Plaintiff may be attempting to claim
7 that his placement on suicide watch constituted cruel and unusual
8 punishment prohibited by the Eighth Amendment. Infliction of
9 suffering on prisoners that is "totally without penological
10 justification" violates the Eighth Amendment. Rhodes v. Chapman,
11 452 U.S. 337, 346 (1981). Only "the unnecessary and wanton
12 infliction of pain . . . constitutes cruel and unusual punishment
13 forbidden by the Eighth Amendment." Whitley v. Albers, 475 U.S.
14 312, 319 (1986) (internal quotation marks and citation omitted).
15 The punishment must constitute "shocking and barbarous treatment."
16 Grummett v. Rushen, 779 F.2d 491, 494 n.1 (9th Cir. 1985).

17
18 The Complaint vaguely alleges that Plaintiff's placement on
19 suicide watch caused "harm and pain," but fails to describe what
20 that harm and pain were, or explain why the placement constituted
21 shocking and barbarous treatment. Accordingly, the Complaint fails
22 to state a claim under the Eighth Amendment, and must be dismissed,
23 with leave to amend.

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1 IV.

2 CONCLUSION

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

16
17 In any amended complaint, Plaintiff should confine his
18 allegations to those operative facts supporting each of his claims.
19 Plaintiff is advised that pursuant to Federal Rule of Civil
20 Procedure 8(a), all that is required is a "short and plain statement
21 of the claim showing that the pleader is entitled to relief."
22 **Plaintiff is strongly encouraged to utilize the standard civil**
23 **rights complaint form when filing any amended complaint, a copy of**
24 **which is attached.** In any amended complaint, Plaintiff should
25 identify the nature of each separate legal claim and make clear
26 what specific factual allegations support each of his separate
27 claims. Plaintiff is strongly encouraged to keep his statements
28 concise and to omit irrelevant details. **It is not necessary for**

1 Plaintiff to cite case law, include legal argument, or attach
2 exhibits at this stage of the litigation. Plaintiff is also advised
3 to omit any claims for which he lacks a sufficient factual basis.
4

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

16 DATED: March 13, 2018

17 /s/
18 SUZANNE H. SEGAL
19 UNITED STATES MAGISTRATE JUDGE
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