

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MARCUS R. ELLINGTON, SR.,  
Plaintiff,  
v.  
CALIFORNIA DEPT. OF CORR. AND  
REH., SECRETARY OF, ET AL.,  
Defendant(s).

Case No. CV 20-9116-CBM (KK)

**ORDER ACCEPTING AMENDED  
FINDINGS AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Fourth Amended Complaint, the relevant records on file, and the Amended Report and Recommendation of the United States Magistrate Judge.

On October 20, 2022, the assigned United States Magistrate Judge issued an Amended Report and Recommendation finding the Fourth Amended Complaint should be dismissed with prejudice and without leave to amend for failure to comply with Federal Rule of Civil Procedure 8 (“Rule 8”). ECF Docket No. (“Dkt.”) 70.

The Court has engaged in de novo review of the Amended Report, and the Court accepts the amended findings and recommendation of the Magistrate Judge.

On November 1, 2022, Plaintiff constructively filed a “Motion for leave to file (second) supplemental Statement of Claims to cure the deficiencies claimed by the Magistrate Judge,” which the Magistrate Judge construed as Objections to the

1 Amended Report and Recommendation. Dkt. 71. In addition, on November 3, 2022,  
2 Plaintiff constructively filed a “Motion for Leave to File Supplemental Complaint,”  
3 seeking leave to supplement the Fourth Amended Complaint with additional claims  
4 against additional defendants arising out of their alleged denial of medical treatment  
5 that has occurred since he filed the Fourth Amended Complaint. Dkt. 72. The  
6 Magistrate Judge construed Docket No. 72 as a Supplement to the Objections filed in  
7 Docket No. 71.

8 On December 6, 2022, Plaintiff constructively filed a Motion to Correct Error  
9 of the Court as to Docket No. 72, stating the Court erred because it “has construed  
10 the Plaintiffs [sic] Motion for leave to file supplemental complaint” Dkt. 72 “as a  
11 response to the Magistrates [sic] FINDINGS AND RECOMMENDATION[(S).”  
12 Dkt. 74. Plaintiff also requests that the Court consider the Motion for Leave to File  
13 Supplemental Complaint attached as Exhibit A to his Motion to Correct. Dkt. 74.  
14 Because Exhibit A to Docket No. 74 is a copy of the document filed in Docket No.  
15 71, which was construed by the Magistrate Judge as Objections to the Amended  
16 Report and Recommendation, it appears Plaintiff also is requesting that the Court  
17 consider Docket No. 71 as a motion to supplement the Fourth Amended Complaint  
18 rather than as Objections to the Amended Report and Recommendation. The Court  
19 grants Plaintiff’s Motion to Correct (Dkt. 74), and considers the Motion for Leave to  
20 File Supplemental Complaint attached as Exhibit A to the Motion to Correct and filed  
21 at Docket No. 71, along with Plaintiff’s motion to supplement filed as Docket No. 72.

22 A trial court has broad discretion in deciding whether to permit a supplemental  
23 pleading. See Keith v. Volpe, 858 F.2d 467, 473 (9th Cir. 1988). Here, as with the  
24 Fourth Amended Complaint, the Court finds each of the proposed supplemental  
25 complaints attached to the “Motion for leave to file (second) supplemental Statement  
26 of Claims to cure the deficiencies claimed by the Magistrate Judge” (Dkt. 71),  
27 “Motion for Leave to File Supplemental Complaint” (Dkt. 72), and Motion to Correct

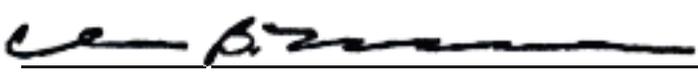
1 Error (Dkt. 74) so confusing that the complaint fails to comply with Rule 8. See Little  
2 v. Baca, No. CV 13-0373-PA (RZ), 2013 WL 436018, at \*3 (C.D. Cal. Feb. 1, 2013)  
3 (holding unclear pleadings that “leav[e] it to the Court to figure out what the full array  
4 of [Plaintiff’s] claims is and upon what federal law, and upon what facts, each claim is  
5 based,” are subject to dismissal). For example, the “Additional Facts” section appears  
6 to allege defendant Oh denied him medical care, but the “Claims for Relief” section  
7 does not mention defendant Oh. Dkt. 72. In addition, it is not clear which  
8 defendants Plaintiff seeks to add to the action or in what capacity he seeks to add  
9 them. For example, it appears Plaintiff is seeking to add defendant Gates based solely  
10 on his role as supervisor. However, as previously explained to Plaintiff in the  
11 Amended Report and Recommendation, “[u]nder Section 1983, supervisory officials  
12 are not liable for actions of subordinates on any theory of vicarious liability.” Crowley  
13 v. Bannister, 734 F.3d 967, 977 (9th Cir. 2013). Moreover, it appears Plaintiff may be  
14 seeking to sue defendants Allison, Galstian, and Johnson based solely on their failure  
15 to respond to Plaintiff’s “complaint letter.” Dkt. 72 at 5. Plaintiff, however, is not  
16 entitled to any particular response to his grievances or to have his grievances  
17 “processed to [his] liking.” See Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988)  
18 (“There is no legitimate claim of entitlement to a grievance procedure.”); Jordan v.  
19 Asuncion, No. CV 17-1283 PSG (SS), 2018 WL 2106464, at \*3 (C.D. Cal. May 7,  
20 2018) (“[A] prisoner [does not] have a constitutional right to any particular grievance  
21 outcome.”). The Court, therefore, finds granting leave to supplement the Fourth  
22 Amended Complaint must be denied because permitting the supplemental complaint  
23 would be futile. Bonin v. Calderon, 59 F.3d 815, 845 (9th Cir. 1995) (“Futility of  
24 amendment can, by itself, justify the denial of a motion for leave to amend.”); see also  
25 F.B.T. Prods., LLC v. Aftermath Recs., No. CV 07-3314-PSG (MANx), 2012 WL  
26 12919088, at \*3 (C.D. Cal. June 27, 2012) (the standard used by district courts in  
27 deciding whether to grant or deny a motion for leave to supplement is the same

1 standard used in deciding whether to grant or deny a motion for leave to amend a  
2 complaint).

3 Finally, on November 8, 2022, Plaintiff constructively filed a “Declaration of  
4 Plaintiff in Support of the 42 U.S.C. § 1983 Civil Complaint.” Dkt. 73. The  
5 Declaration does not appear to contain factual statements that are not otherwise  
6 alleged in the Fourth Amended Complaint (dkt. 62), the Supplemental Statement of  
7 Claims (dkt. 67), or the proposed supplemental complaints attached to Plaintiff’s  
8 Motion for leave to file (second) supplemental Statement of Claims (dkt. 71),  
9 Plaintiff’s Motion for Leave to File Supplemental Complaint (dkt. 72), and Plaintiff’s  
10 Motion to Correct (dkt. 74). Moreover, in considering whether the Fourth Amended  
11 Complaint or any of the proposed supplemental complaints states a claim, the Court  
12 has accepted as true all of the material factual statements alleged therein. Hamilton v.  
13 Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). Therefore, while it is not clear which  
14 complaint or supplemental statement the Declaration pertains to, it is not relevant to  
15 the Court’s consideration of whether the Fourth Amended Complaint should be  
16 dismissed for failure to comply with Rule 8 or whether leave to file the proposed  
17 supplemental complaint should be denied.

18 IT IS THEREFORE ORDERED that Judgment be entered dismissing the  
19 Fourth Amended Complaint with prejudice and without leave to amend. IT IS  
20 FURTHER ORDERED that Plaintiff’s Motion for Leave to File Supplemental  
21 Complaint is DENIED.

22  
23 Dated: January 19, 2023.

  
HONORABLE CONSUELO B. MARSHALL  
United States District Judge

24  
25  
26  
27  
28