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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CV F 07 151 AWI SMS P

TREMAINE HUNTER,

ORDER VACATING SCHEDULING  
CONFERENCE SET FOR MARCH 6, 2007  
(Doc. 4.)

Plaintiff,

ORDER DISMISSING COMPLAINT WITH  
LEAVE TO AMEND (Doc. 1)

v.

ORDER DIRECTING CLERK OF COURT TO  
SEND PLAINTIFF BLANK CIVIL RIGHTS  
FORM AND IN FORMA PAUPERIS  
APPLICATION

YATES, et. al.,

ORDER DIRECTING DEFENDANTS TO FILE  
RESPONSE TO COMPLAINT WITHIN 45  
DAYS OF DATE COURT ISSUES ORDER  
FINDING COMPLAINT STATES  
COGNIZABLE CLAIMS

Defendants.

Tremaine Hunter (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed the instant action in the Fresno County Superior Court on November 29, 2006. The action was removed to Federal court by the Defendants and received on January 24, 2007.

By Order of the Court, an Scheduling Conference was set for March 6, 2007. However, as the Court has not yet had the opportunity to conduct a preliminary screening under the Prison Litigation Reform Act, the Order was issued in error. The conference will therefore, be vacated.

**A. SCREENING STANDARD**

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally

1 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
2 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).  
3 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall  
4 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a  
5 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

6 A complaint, or portion thereof, should only be dismissed for failure to state a claim upon  
7 which relief may be granted if it appears beyond doubt that plaintiff can prove no set of facts in  
8 support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding,  
9 467 U.S. 69, 73 (1984), *citing* Conley v. Gibson, 355 U.S. 41, 45-46 (1957); *see also* Palmer v.  
10 Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a  
11 complaint under this standard, the court must accept as true the allegations of the complaint in  
12 question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the  
13 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor.  
14 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

## 15 **B. SUMMARY OF COMPLAINT**

16 Plaintiff alleges that the Defendants violated his state and federal rights by delaying  
17 medical treatment. However, Plaintiff merely completed the civil cover sheet for the Fresno  
18 County Superior Court and thus, does not provide sufficient information to proceed in this Court.  
19 The Court will provide Plaintiff with the relevant law and a form Complaint to enable him to  
20 allege his claims more completely.

## 21 **C. CLAIMS FOR RELIEF**

### 22 *1. Linkage Requirement*

23 The Civil Rights Act under which this action was filed provides:

24 Every person who, under color of [state law] . . . subjects, or causes  
25 to be subjected, any citizen of the United States . . . to the  
26 deprivation of any rights, privileges, or immunities secured by the  
27 Constitution . . . shall be liable to the party injured in an action at  
28 law, suit in equity, or other proper proceeding for redress.

27 42 U.S.C. § 1983. The statute plainly requires that there be an actual connection or link between  
28 the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See

1 Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
2 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a  
3 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates  
4 in another’s affirmative acts or omits to perform an act which he is legally required to do that  
5 causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th  
6 Cir. 1978). In order to state a claim for relief under section 1983, the plaintiff must link each  
7 named defendant with some affirmative act or omission that demonstrates a violation of  
8 plaintiff’s federal rights.

9 In this case, Plaintiff names the Warden of the institution where he is confined in addition  
10 to a Doctor but he does not allege specific facts linking these individuals to acts or omissions  
11 giving rise to the alleged violations.

## 12 **2. Eighth Amendment Medical Claims**

13 A prisoner’s claim of inadequate medical care does not constitute cruel and unusual punishment  
14 unless the mistreatment rises to the level of “deliberate indifference to serious medical needs.”  
15 Estelle v. Gamble, 429 U.S. 97, 106 (1976). The “deliberate indifference” standard involves an  
16 objective and a subjective prong. First, the alleged deprivation must be, in objective terms,  
17 “sufficiently serious.” Farmer v. Brennan, 511 U.S. 825, 834 (1994) (*citing* Wilson v. Seiter, 501  
18 U.S. 294, 298 (1991)). Second, the prison official must act with a “sufficiently culpable state of  
19 mind,” which entails more than mere negligence, but less than conduct undertaken for the very  
20 purpose of causing harm. Farmer v. Brennan, 511 U.S. at 837. A prison official does not act in a  
21 deliberately indifferent manner unless the official “knows of and disregards an excessive risk to  
22 inmate health or safety.” Id.

23 In applying this standard, the Ninth Circuit has held that before it can be said that a  
24 prisoner’s civil rights have been abridged, “the indifference to his medical needs must be  
25 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this  
26 cause of action.” Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980), *citing*  
27 Estelle, 429 U.S. at 105-06. “[A] complaint that a physician has been negligent in diagnosing or  
28 treating a medical condition does not state a valid claim of medical mistreatment under the

1 Eighth Amendment. Medical malpractice does not become a constitutional violation merely  
2 because the victim is a prisoner.” Estelle v. Gamble, 429 U.S. at 106; see also Anderson v.  
3 County of Kern, 45 F.3d 1310, 1316 (9th Cir. 1995); McGuckin v. Smith, 974 F.2d 1050, 1050  
4 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136  
5 (9th Cir. 1997) (en banc). Even gross negligence is insufficient to establish deliberate  
6 indifference to serious medical needs. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir.  
7 1990).

### 8 **3. Supervisory Liability**

9 Supervisory personnel are generally not liable under Section 1983 for the actions of their  
10 employees under a theory of respondeat superior and, therefore, when a named defendant holds a  
11 supervisory position, the causal link between him and the claimed constitutional violation must  
12 be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v.  
13 Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), *cert. denied*, 442 U.S. 941 (1979). To state a claim  
14 for relief under Section 1983 based on a theory of supervisory liability, Plaintiff must allege  
15 some facts that would support a claim that supervisory Defendants either: personally participated  
16 in the alleged deprivation of constitutional rights; knew of the violations and failed to act to  
17 prevent them; or promulgated or “implemented a policy so deficient that the policy ‘itself is a  
18 repudiation of constitutional rights’ and is ‘the moving force of the constitutional violation.’”  
19 Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (*internal citations omitted*); Taylor v. List,  
20 880 F.2d 1040, 1045 (9th Cir. 1989). Although federal pleading standards are broad, some facts  
21 must be alleged to support claims under section 1983. See Leatherman v. Tarrant County  
22 Narcotics Unit, 507 U.S. 163, 168 (1993).

23 Plaintiff has not alleged any facts indicating that Defendant Yates personally participated  
24 in the alleged deprivation of constitutional rights; knew of the violations and failed to act to  
25 prevent them; or promulgated or “implemented a policy so deficient that the policy ‘itself is a  
26 repudiation of constitutional rights’ and is ‘the moving force of the constitutional violation.’”  
27 Hansen v. Black at 646.

### 28 **4. State Law Negligence**

1 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original  
2 jurisdiction, the district court “shall have supplemental jurisdiction over all other claims in the  
3 action within such original jurisdiction that they form part of the same case or controversy under  
4 Article III,” except as provided in subsections (b) and (c). “[O]nce judicial power exists under §  
5 1367(a), retention of supplemental jurisdiction over state law claims under 1367(c) is  
6 discretionary.” Acri v. Varian Assoc., Inc., 114 F.3d 999, 1000 (9th Cir. 1997). “The district  
7 court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . .  
8 the district court has dismissed all claims over which it has original jurisdiction.” 28 U.S.C.  
9 §1367(c)(3). The Supreme Court has cautioned that “if the federal claims are dismissed before  
10 trial, . . . the state claims should be dismissed as well.” United Mine Workers of America v.  
11 Gibbs, 383 U.S. 715, 726 (1966).

12 In this case, in order for Plaintiff to proceed on his state law claims, he must establish a  
13 federal constitutional violation over which this Court has jurisdiction. A public employee is  
14 liable for injury to a prisoner “proximately caused by his negligent or wrongful act or omission.”  
15 Cal. Gov’t Code § 844.6(d) (West 2006). “In order to establish negligence under California law,  
16 a plaintiff must establish four required elements: (1) duty; (2) breach; (3) causation; and (4)  
17 damages.” Ileto v. Glock Inc., 349 F.3d 1191, 1203 (9th Cir. 2003).

### 18 **5. Evidence and Exhibits**

19 It is inappropriate to attach exhibits to a complaint. See Rule 8, Federal Rules of Civil  
20 Procedure. Further, the Court cannot serve as a repository for the parties' evidence. Originals or  
21 copies of evidence (i.e., prison or medical records, witness affidavits, etc.) should not be  
22 submitted until the course of litigation brings the evidence into question (for example, on a  
23 motion for summary judgment, at trial, or when requested by the court). At this point, the  
24 submission of evidence is premature as the Plaintiff is only required to state a prima facie claim  
25 for relief. Thus, Plaintiff should not attach evidence or exhibits to his Complaint.

### 26 **6. Rule 8(a)**

27 A plaintiff’s complaint must satisfy the requirement of Federal Rule of Civil Procedure  
28 8(a), which calls for a “short and plain statement of the claim showing that the pleader is entitled

1 to relief.” Rule 8(a) expresses the principle of notice-pleading, whereby the pleader need only  
2 give the opposing party fair notice of a claim. Conley v. Gibson, 355 U.S. 41, 45-46 (1957).  
3 Rule 8(a) does not require an elaborate recitation of every fact a plaintiff may ultimately rely  
4 upon at trial, but only a statement sufficient to “give the defendant fair notice of what the  
5 plaintiff’s claim is and the grounds upon which it rests.” Id. at 47.

#### 6 **D. CONCLUSION**

7 The Court finds that Plaintiff’s complaint does not contain any claims upon which relief  
8 can be granted under § 1983 against any of the Defendants. The Court will provide Plaintiff with  
9 time to file an Amended Complaint curing the deficiencies identified above should he wish to do  
10 so.

11 Plaintiff must demonstrate in the Amended Complaint how the conditions complained of  
12 resulted in a deprivation of his constitutional rights. See, Ellis v. Cassidy, 625 F.2d 227 (9<sup>th</sup> Cir.  
13 1980). The Amended Complaint must specifically state how each Defendant is involved.  
14 Further, there can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or  
15 connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423,  
16 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9<sup>th</sup> Cir. 1980); Johnson v. Duffy, 588  
17 F.2d 740, 743 (9<sup>th</sup> Cir. 1978).

18 Finally, Plaintiff is advised that Local Rule 15-220 requires that an Amended Complaint  
19 be complete in itself *without reference to any prior pleading*. As a general rule, an Amended  
20 Complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9<sup>th</sup> Cir.  
21 1967). Once an Amended Complaint is filed, the original Complaint no longer serves any  
22 function in the case. Therefore, in an Amended Complaint, as in an original Complaint, each  
23 claim and the involvement of each defendant must be sufficiently alleged. The Amended  
24 Complaint should be clearly and boldly titled “AMENDED COMPLAINT,” reference the  
25 appropriate case number, and be an original signed under penalty of perjury.

26 Plaintiff should also refrain from referencing or “incorporating by reference” any of his  
27 allegations. Each allegation must be complete in and of itself and not reference other portions of  
28 the pleading.

1 **E. ORDER**

2 The Court HEREBY ORDERS:

- 3 1. The Order setting an initial scheduling conference issued on January 29, 2007, is  
4 VACATED;
- 5 2. The Clerk of Court is DIRECTED to SEND Plaintiff a blank civil rights  
6 complaint form and an Application to Proceed In Forma Pauperis;
- 7 3. The Complaint is DISMISSED with leave to amend. WITHIN THIRTY (30) days  
8 from the date of service of this order, Plaintiff SHALL:
- 9 a. File an Amended Complaint curing the deficiencies identified by the Court  
10 in this Order, or
- 11 b. Notify the Court in writing that he does not wish to file an Amended  
12 Complaint and pursue the action but instead wishes to voluntary dismiss  
13 the case. See, Fed.R.Civ.P. 41(a)(1).
- 14 4. Defendants SHALL FILE a response to the Complaint WITHIN 45 DAYS of the  
15 date the Court ISSUES AN ORDER finding the Complaint states cognizable  
16 claims for relief on which it will proceed.

17 Plaintiff is forewarned that his failure to comply with this Order may result in a  
18 Recommendation that the Complaint be dismissed pursuant to Local Rule 11-110.

19  
20 IT IS SO ORDERED.

21 **Dated:** January 31, 2007  
22 icido3

23 /s/ Sandra M. Snyder  
24 UNITED STATES MAGISTRATE JUDGE  
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