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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MORRIS MESTER,

Plaintiff,

v.

VILAYSANIE, et al.,

Defendants.

CASE NO. 1:07-cv-00797-OWW-WMW PC

ORDER REQUIRING PLAINTIFF TO FILE AMENDED COMPLAINT OR TO NOTIFY COURT OF WILLINGNESS TO PROCEED ONLY ON CLAIMS FOUND TO BE COGNIZABLE

(Doc. 4)

RESPONSE DUE WITHIN THIRTY DAYS

**I. Screening Requirement**

Plaintiff Morris Mester (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

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

“Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.

1 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and  
2 plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a).  
3 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the  
4 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading  
5 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330  
6 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements  
7 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257  
8 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

## 9 **II. Plaintiff’s Claims**

### 10 **A. Summary of Plaintiff’s Complaint**

11 Plaintiff is a prisoner incarcerated at the California Men’s Colony in San Louis Obispo,  
12 California. Plaintiff is suing under 42 U.S.C. § 1983 for the deprivation of his rights by prison  
13 medical officials. Plaintiff does not specify what rights were violated, but they appear to arise out  
14 of the First and Eighth Amendments of the U.S. Constitution. Plaintiff alleges that prison medical  
15 officials withheld medical treatment from Plaintiff in retaliation for filing an earlier lawsuit against  
16 prison officials.

17 Although Plaintiff’s allegations implicate numerous members of the prison medical staff,  
18 Plaintiff only names Dr. Vilaysanie, M.D. as defendant. Pursuant to this order, Plaintiff will be  
19 given the opportunity to amend his complaint to add additional persons as defendants, or go forward  
20 only against Defendant Vilaysaynie. Plaintiff is advised if he chooses to go forward with this  
21 complaint, his claim will only be against Defendant Vilaysanie and not against any other members  
22 of the medical staff.

### 23 **B. First Amendment Claim - Retaliation**

24 Plaintiff alleges that medical staff withheld medical treatment from Plaintiff in retaliation for  
25 a lawsuit he filed against prison officials. In the prison context, allegations of retaliation against a  
26 prisoner’s First Amendment rights to speech or to petition the government may support a section  
27 1983 claim. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985); see also Valandingham v.  
28 Bojorquez, 866 F.2d 1135 (9th Cir. 1989); Pratt v. Rowland, 65 F.3d 802, 807 (9th Cir. 1995). “[A]

1 viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state  
2 actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct,  
3 and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the  
4 action did not reasonably advance a legitimate correctional goal." Rhodes v. Robinson, 408 F.3d  
5 559, 567-68 (9th Cir. 2005). An allegation of retaliation against a prisoner's First Amendment right  
6 to file a prison grievance is sufficient to support a claim under section 1983. Bruce v. Ylst, 351 F.3d  
7 1283, 1288 (9th Cir. 2003).

8 Plaintiff alleges that prison medical officials withheld medical treatment from Plaintiff  
9 because Plaintiff filed lawsuits against prison officials. Therefore, Plaintiff states a cognizable claim  
10 for retaliation against the exercise of his First Amendment rights.

### 11 **C. Eighth Amendment Claim - Denial of Medical Treatment**

12 Plaintiff alleges that prison medical staff withheld medical treatment from Plaintiff,  
13 exacerbating his chronic pain and other medical issues. The Eighth Amendment prohibits the  
14 imposition of cruel and unusual punishments and "embodies 'broad and idealistic concepts of  
15 dignity, civilized standards, humanity and decency.'" Estelle v. Gamble, 429 U.S. 97, 102 (1976)  
16 (quoting Jackson v. Bishop, 404 F.2d 571, 579 (8th Cir. 1968)). A prison official violates the Eighth  
17 Amendment only when two requirements are met: (1) the objective requirement that the deprivation  
18 is "sufficiently serious", Farmer v. Brennan, 511 U.S. 825, 834 (1994) (quoting Wilson v. Seiter, 501  
19 U.S. 294, 298 (1991), and (2) the subjective requirement that the prison official has a "sufficiently  
20 culpable state of mind", Id. (quoting Wilson, 501 U.S. at 298). The objective requirement that the  
21 deprivation be "sufficiently serious" is met where the prison official's act or omission results in the  
22 denial of "the minimal civilized measure of life's necessities". Id. (quoting Rhodes v. Chapman, 452  
23 U.S. 337, 347 (1981)). The subjective requirement that the prison official has a "sufficiently  
24 culpable state of mind" is met where the prison official acts with "deliberate indifference" to inmate  
25 health or safety. Id. (quoting Wilson, 501 U.S. at 302-303).

26 "[D]eliberate indifference to a prisoner's serious illness or injury states a cause of action  
27 under § 1983." Estelle v. Gamble, 429 U.S. 97, 105 (1976). "Denial of medical attention to  
28 prisoners constitutes an [E]ighth [A]mendment violation if the denial amounts to deliberate

1 indifference to serious medical needs of the prisoners.” Toussaint v. McCarthy, 801 F.2d 1080, 1111  
2 (9th Cir. 1986) (citing Estelle, 429 U.S. at 106). “A ‘serious’ medical need exists if the failure to  
3 treat a prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton  
4 infliction of pain.” McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other  
5 grounds, WMX Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (quoting Estelle,  
6 429 U.S. at 104).

7 Plaintiff alleges that he was denied pain medication and other medical treatments  
8 recommended by specialists outside the prison which exacerbated his chronic pain. Plaintiff also  
9 alleges that the deprivation of treatment was intentionally done in retaliation for filing lawsuits  
10 against prison officials. Therefore, Plaintiff states a cognizable claim for denial of medical treatment  
11 in violation of the Eighth Amendment.

### 12 **III. Conclusion and Order**

13 Plaintiff’s complaint states cognizable claims against Defendant Vilasaynie for violating the  
14 Eighth Amendment and retaliating against Plaintiff’s exercise of his First Amendment Rights.  
15 Plaintiff’s complaint fails to state claims against any other defendants. The Court will provide  
16 Plaintiff with the opportunity to file an amended complaint curing the deficiencies identified by the  
17 Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not  
18 change the nature of this suit by adding new, unrelated claims in his amended complaint. George  
19 v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

20 If Plaintiff does not wish to file an amended complaint and is agreeable to proceeding only  
21 on the claims identified in this order as cognizable, Plaintiff may so notify the Court in writing, and  
22 the Court will issue a recommendation for dismissal of the other claims and defendants, and will  
23 forward Plaintiff one (1) summonses and one (1) USM-285 forms for completion and return. Upon  
24 receipt of the forms, the Court will direct the United States Marshal to initiate service of process.

25 If Plaintiff opts to amend, his amended complaint should be brief, Fed. R. Civ. P. 8(a), but  
26 must state what each named defendant did that led to the deprivation of Plaintiff’s constitutional or  
27 other federal rights, Hydrick v. Hunter, 500 F.3d 978, 987-88 (9th Cir. 2007). With respect to  
28 exhibits, while they are permissible if incorporated by reference, Fed. R. Civ. P. 10(c), they are not

1 necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). In other words, it is not  
2 necessary at this stage to submit evidence to prove the allegations in Plaintiff’s complaint because  
3 at this stage Plaintiff’s factual allegations will be accepted as true. Although accepted as true, the  
4 “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level . . . .”,  
5 Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1965 (2007) (citations omitted), meaning Plaintiff  
6 must provide enough allegations in his complaint to demonstrate why he is entitled to the relief that  
7 he seeks.

8 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint.  
9 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
10 (9th Cir. 1987). The amended complaint must be “complete in itself without reference to the prior  
11 or superceded pleading.” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged  
12 in an original complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d  
13 at 567 (citing London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth,  
14 114 F.3d at 1474. In other words, even the claims that were properly stated in the original complaint  
15 must be completely stated again in the amended complaint.

16 Based on the foregoing, it is HEREBY ORDERED that:

- 17 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 18 2. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:
  - 19 a. File an amended complaint curing the deficiencies identified by the Court in  
20 this order, or
  - 21 b. Notify the Court in writing that he does not wish to file an amended  
22 complaint and wishes to proceed only against Defendant Vilaysanie for denial  
23 of medical treatment in violation of the Eighth Amendment and retaliating  
24 against Plaintiff’s exercise of his First Amendment rights; and
- 25 3. If Plaintiff fails to comply with this order, this action will be dismissed for failure to  
26 obey a court order.

27 IT IS SO ORDERED.

28 **Dated: January 30, 2009**

/s/ William M. Wunderlich

UNITED STATES MAGISTRATE JUDGE

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