

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT RAY LARCH,

CASE NO. 1:08-cv-00492-DLB PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH
LEAVE TO FILE AMENDED COMPLAINT
WITHIN THIRTY DAYS

v.

MENTAL HEALTH CARE SERVICES,

(Doc. 1)

Defendant.
/**Screening Order****I. Screening Requirement**

Plaintiff Robert Ray Larch("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 this action on January 28, 2008.

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).

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1 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
2 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
3 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
4 plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P. 8(a).
5 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
6 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
7 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
8 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
9 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
10 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

11 **II. Plaintiff’s Medical Care Claim**

12 Plaintiff is currently housed at Avenal State Prison. It appears that Plaintiff alleges a
13 violation of the Eighth Amendment of the United States Constitution stemming from the use of
14 Seroqueil as part of Plaintiff’s mental health care treatment. Liberally construing Plaintiff’s
15 complaint, it appears that Plaintiff alleges that on October 29, 2007 he was prescribed Seroqueil by
16 Dr. Stone. Plaintiff alleges that he was later seen by another physician who informed him that
17 because of Seroqueil, Plaintiff had developed Type-2 diabetes. Plaintiff names Mental Health Care
18 Services as a defendant.¹

19 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
20 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096
21 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part

23 ¹ Plaintiff also lists “STATE RPISON” as a defendant in the case caption. To the extent that Plaintiff is
24 attempting to name a state prison as a defendant, Plaintiff may not do so. The Eleventh Amendment prohibits federal
25 courts from hearing suits brought against an unconsenting state. Brooks v. Sulphur Springs Valley Elec. Co., 951
26 F.2d 1050, 1053 (9th Cir. 1991) (citation omitted); see also Seminole Tribe of Fla. v. Florida, 116 S.Ct. 1114, 1122
27 (1996); Puerto Rico Aqueduct Sewer Auth. v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993); Austin v. State
28 Indus. Ins. Sys., 939 F.2d 676, 677 (9th Cir. 1991). The Eleventh Amendment bars suits against state agencies as
well as those where the state itself is named as a defendant. See Natural Resources Defense Council v. California
Dep’t of Transp., 96 F.3d 420, 421 (9th Cir. 1996); Brooks, 951 F.2d at 1053; Taylor v. List, 880 F.2d 1040, 1045
(9th Cir. 1989) (concluding that Nevada Department of Prisons was a state agency entitled to Eleventh Amendment
immunity); Mitchell v. Los Angeles Community College Dist., 861 F.2d 198, 201 (9th Cir. 1989). Because Avenal
State Prison is a part of the California Department of Corrections, which is a state agency, it is entitled to Eleventh
Amendment immunity from suit

1 test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by
2 demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or
3 the unnecessary and wanton infliction of pain,’” and (2) “the defendant’s response to the need was
4 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059
5 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th
6 Cir. 1997) (en banc) (internal quotations omitted)).

7 Deliberate indifference is shown by “a purposeful act or failure to respond to a prisoner’s
8 pain or possible medical need, and harm caused by the indifference.” Id. (citing McGuckin, 974 F.2d
9 at 1060). Deliberate indifference may be manifested “when prison officials deny, delay or
10 intentionally interfere with medical treatment, or it may be shown by the way in which prison
11 physicians provide medical care.” Id. (citing McGuckin at 1060 (internal quotations omitted)).
12 Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to
13 further harm in order for the prisoner to make a claim of deliberate indifference to serious medical
14 needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404,
15 407 (9th Cir. 1985)).

16 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under
17 color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal
18 law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006).

19 Plaintiff has not alleged any specific facts linking defendant Mental Health Care Services to
20 an act or omission which demonstrates a violation of his rights.² Plaintiff is required to briefly set
21 forth facts in support of his claims against the named defendants (e.g., identify what the defendant
22 did or did not do). Fed. R. Civ. P. 8(a); Bell Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1965
23 (2007). The Court will provide Plaintiff with the opportunity to file an amended complaint.

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28 ²The Court cannot determine, from reading Plaintiff’s complaint, whether Mental Health Care Services is a
“person” to whom Section 1983 applies.

1 **III. Conclusion and Order**

2 Plaintiff's complaint fails to state a claim upon which relief may be granted under federal
3 law. The Court will provide Plaintiff with the opportunity to file an amended complaint curing the
4 deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir.
5 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims in his
6 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no "buckshot"
7 complaints).

8 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
9 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights,
10 Hydrick v. Hunter, 500 F.3d 978, 987-88 (9th Cir. 2007). Although accepted as true, the "[f]actual
11 allegations must be [sufficient] to raise a right to relief above the speculative level" Bell
12 Atlantic Corp. v. Twombly, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

13 Under section 1983, liability may not be imposed on supervisory personnel for the actions
14 of their employees under a theory of respondeat superior. When a named defendant holds a
15 supervisory position, the causal link between that defendant and the claimed constitutional violation
16 must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v.
17 Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979). To state a claim for
18 relief under section 1983 for supervisory liability, Plaintiff must allege some facts indicating that the
19 defendant either: personally participated in the alleged deprivation of constitutional rights; knew of
20 the violations and failed to act to prevent them; or promulgated or "implemented a policy so deficient
21 that the policy 'itself is a repudiation of constitutional rights' and is 'the moving force of the
22 constitutional violation.'" Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (internal citations
23 omitted); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

24 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
25 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
26 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
27 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an original
28 complaint which are not alleged in an amended complaint are waived." King, 814 F.2d at 567 (citing

1 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at
2 1474.

3 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 4 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim;
- 5 2. The Clerk's Office shall send Plaintiff a complaint form;
- 6 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
7 amended complaint;
- 8 4. Plaintiff may not add any new, unrelated claims to this action via his amended
9 complaint and any attempt to do so will result in an order striking the amended
10 complaint; and
- 11 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
12 action be dismissed, with prejudice, for failure to state a claim.

13
14 IT IS SO ORDERED.

15 **Dated: February 9, 2009**

/s/ **Dennis L. Beck**
UNITED STATES MAGISTRATE JUDGE