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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

CASE NO. 1:09-cv-00544 DLB PC

Plaintiff,

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

v.

JULIO CAMPOS, et al.,

Defendants.

(Doc. 20)

/ RESPONSE DUE WITHIN TWENTY DAYS

**Screening Order**

**I. Screening Requirement**

Plaintiff John Doe<sup>1</sup> (“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 March 23, 2009.

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

<sup>1</sup> Fictitious name.

1 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

2 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited  
3 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.  
4 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and  
5 plain statement of the claim showing that the pleader is entitled to relief . . . .” Fed. R. Civ. P. 8(a).  
6 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the  
7 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading  
8 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330  
9 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements  
10 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257  
11 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

## 12 **II. Summary of Plaintiff’s Complaint**

13 Plaintiff is currently housed at Kern Valley State Prison (“KVSP”), where the events at issue  
14 in this action allegedly occurred. Plaintiff alleges a violation of the Eighth Amendment of the United  
15 States Constitution.

### 16 **A. Defendant Campos**

17 Plaintiff alleges that in November 2005, inmate Navarro threatened Plaintiff to “cooperate”  
18 with defendant Campos, a Licensed Vocational Nurse at K.V.S.P. Plaintiff alleges that inmate  
19 Navarro is a “shot-caller” and that Plaintiff understood Navarro’s threats as an order to subject  
20 himself to sexual exploitation by defendant Campos or face serious danger. Plaintiff alleges that he  
21 was sexually assaulted by defendant Campos on a regular basis from November to approximately  
22 December 2005 or January 2006. Plaintiff alleges that in return, defendant Campos delivered drugs  
23 to inmate Navarro.

24 The Eighth Amendment protects prisoners from inhumane methods of punishment and from  
25 inhumane conditions of confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006).  
26 Extreme deprivations are required to make out a conditions of confinement claim, and only those  
27 deprivations denying the minimal civilized measure of life’s necessities are sufficiently grave to form  
28 the basis of an Eighth Amendment violation. Hudson v. McMillian, 503 U.S. 1, 9, 112 S.Ct. 995

1 (1992) (citations and quotations omitted). In order to state a claim for violation of the Eighth  
2 Amendment, the plaintiff must allege facts sufficient to support a claim that prison officials knew  
3 of and disregarded a substantial risk of serious harm to the plaintiff. E.g., Farmer v. Brennan, 511  
4 U.S. 825, 847, 114 S.Ct. 1970 (1994); Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

5 The circumstances, nature, and duration of the deprivations are critical in determining  
6 whether the conditions complained of are grave enough to form the basis of a viable Eighth  
7 Amendment claim. Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2006)

8 Plaintiff's allegations that defendant Campos sexually abused Plaintiff are sufficient to state  
9 a claim against him for violation of the Eighth Amendment.

10 **B. Defendants Acosta, Trinh, Syed, Bindler, Tilton and Doe**

11 Plaintiff alleges that he reported the assault, and was later seen by defendant J. Acosta, a  
12 clinical case manager. Plaintiff states that he informed defendant Acosta of the sexual assaults and  
13 also of the fact that Plaintiff was suffering from recurring thoughts of sexual assault, depression,  
14 anxiety, paranoia, and nightmares. Plaintiff states that he was informed by defendant Acosta that  
15 Plaintiff was suffering from Post-Traumatic Stress Disorder ("P.T.S.D."). Plaintiff was then  
16 informed that CDCR did not classify P.T.S.D. as a serious medical disorder and therefore did not  
17 provide treatment for the condition. Plaintiff alleges that defendant Acosta failed to provide proper  
18 treatment.

19 Plaintiff alleges that defendant Bindler, the Chief Psychologist at KVSP, terminated a  
20 P.T.S.D. study group prematurely. Plaintiff alleges that defendants Trinh and Syed also diagnosed  
21 Plaintiff with P.T.S.D. but refused to provide treatment. Plaintiff alleges that defendants Tilton and  
22 Doe implemented a policy not to recognize P.T.S.D. as a serious medical disorder, thus denying  
23 Plaintiff of proper and adequate mental health treatment.

24 "[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
25 must show 'deliberate indifference to serious medical needs.'" Jett v. Penner, 439 F.3d 1091, 1096  
26 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part  
27 test for deliberate indifference requires the plaintiff to show (1) "'a serious medical need' by  
28 demonstrating that 'failure to treat a prisoner's condition could result in further significant injury or

1 the unnecessary and wanton infliction of pain,” and (2) “the defendant’s response to the need was  
2 deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059  
3 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th  
4 Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a  
5 purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused  
6 by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Deliberate indifference may be  
7 manifested “when prison officials deny, delay or intentionally interfere with medical treatment, or  
8 it may be shown by the way in which prison physicians provide medical care.” Id. (citing McGuckin  
9 at 1060 (internal quotations omitted)). Where a prisoner is alleging a delay in receiving medical  
10 treatment, the delay must have led to further harm in order for the prisoner to make a claim of  
11 deliberate indifference to serious medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd.  
12 of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985)).

13 “[T]he existence of an injury that a reasonable doctor would find important and worthy of  
14 comment or treatment, . . . the presence of a medical condition that significantly affects an  
15 individual’s daily activities, and . . . the existence of chronic or substantial pain” are indications of  
16 a serious medical need. Doty v. County of Lassen, 37 F.3d 540, 546 n.3 (9th Cir. 1994) (citing  
17 McGuckin v. Smith, 974 F.2d 1050, 1059-1060 (9th Cir. 1992), overruled on other grounds, WMX  
18 Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc)); Lopez v. Smith, 203 F.3d  
19 1122, 1131 (9th Cir. 2000).

20 Plaintiff has sufficiently alleged the existence of a serious medical need and that further harm  
21 resulted due to the delay in properly treating his P.T.S.D. Further, Plaintiff has alleged sufficient  
22 facts to allow him to proceed against Defendants Acosta, Trinh, and Syed for violation of the Eighth  
23 Amendment. Plaintiff’s allegations are sufficient to support a claim that based on these defendants’  
24 knowledge of Plaintiff’s sexual abuse and complaints, coupled their diagnoses of Plaintiff with  
25 P.T.S.D., these defendants may be liable under the Eighth Amendment for failure to provide  
26 adequate medical care.

27 Plaintiff’s allegation that defendant Tilton and Doe implemented a policy not to provide  
28 treatment for P.T.S.D. is also sufficient to state a claim against them for violation of the Eighth

1 Amendment.

2 However, with respect to defendant Bindler, Plaintiff’s allegation that he acted with  
3 deliberate indifference by prematurely cancelling a P.T.S.D. study group, of which Plaintiff was not  
4 a member, is not sufficient to state a claim against him. Plaintiff has not sufficiently alleged that  
5 defendant Bindler “[knew] of and disregard[ed] an excessive risk to [plaintiff’s] health or safety.”  
6 Farmer, 511 U.S. at 837. Plaintiff has not demonstrated how defendant Bindler personally  
7 participated in depriving Plaintiff of his rights by cancelling a study group.

8 **III. Conclusion and Order**

9 Plaintiff’s first amended complaint states a claim under the Eighth Amendment against  
10 Defendants Campos, Acosta, Syed, Trinh, Tilton and Doe, but fails to state a claim against defendant  
11 Bindler. The Court will provide Plaintiff with the opportunity to file a second amended complaint  
12 curing the deficiencies identified by the Court in this order. Noll v. Carlson, 809 F.2d 1446, 1448-49  
13 (9th Cir. 1987).

14 If Plaintiff does not wish to file a second amended complaint and is agreeable to proceeding  
15 only against Defendants Campos, Acosta, Syed, Trinh, Tilton and Doe, Plaintiff may so notify the  
16 Court in writing, and the Court will issue a Findings and Recommendations recommending that  
17 Defendant Bindler be dismissed from this action, and will forward Plaintiff six summonses and six  
18 USM-285 forms for completion and return. Upon receipt of the forms, the Court will direct the  
19 United States Marshal to initiate service of process.

20 If Plaintiff opts to file a second amended complaint, the complaint should be brief, Fed. R.  
21 Civ. P. 8(a), but he must demonstrate in his complaint how the conditions complained of have  
22 resulted in a deprivation of plaintiff’s constitutional rights. See Ellis v. Cassidy, 625 F.2d 227 (9th  
23 Cir. 1980). The complaint must allege in specific terms how each named defendant is involved.  
24 There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection  
25 between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976);  
26 May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir.  
27 1978). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to  
28 relief above the speculative level . . . .” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 127 S.Ct.

1 1955, 1965 (2007) (citations omitted).

2 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,  
3 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567  
4 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded  
5 pleading,” Local Rule 15-220. Plaintiff is warned that “[a]ll causes of action alleged in an original  
6 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing  
7 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at  
8 1474.

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

- 10 1. The Clerk’s Office shall send Plaintiff a civil rights complaint form;
- 11 2. Within **twenty (20) days** from the date of service of this order, Plaintiff must either:
  - 12 a. File a second amended complaint curing the deficiencies identified by the  
13 Court in this order, or
  - 14 b. Notify the Court in writing that he does not wish to file an amended  
15 complaint and wishes to proceed only against Defendants Campos, Acosta,  
16 Syed, Trinh, Tilton and Doe and Acosta on his Eighth Amendment claims;  
17 and
- 18 3. If Plaintiff fails to comply with this order, this action will be dismissed for failure to  
19 obey a court order.

20  
21 IT IS SO ORDERED.

22 **Dated: August 20, 2009**

23 /s/ Dennis L. Beck  
24 UNITED STATES MAGISTRATE JUDGE  
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