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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIE ORTIZ,)	CASE NO. 1:09-cv-02069-GSA PC
)	
Plaintiff,)	ORDER DISMISSING COMPLAINT, WITH
)	LEAVE TO FILE AMENDED COMPLAINT
v.)	WITHIN THIRTY DAYS
)	
DR. JOHNSON, M.D., et al.,)	(Doc. 1)
)	
Defendants.)	
	/	

Screening Order

I. Screening Requirement

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 has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c)(1).

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

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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4 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
5 exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S.
6 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to Rule 8(a), a complaint must contain “a short and
7 plain statement of the claim showing that the pleader is entitled to relief . . .” Fed. R. Civ. P. 8(a).
8 “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the
9 grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading
10 standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330
11 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements
12 of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257
13 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

14 **II. Plaintiff’s Claims**

15 Plaintiff, an inmate in the custody of the California Department of Corrections and
16 Rehabilitation (CDCR) at Corcoran State Prison, brings this lawsuit against correctional officials
17 employed by the CDCR. Plaintiff claims that he was denied adequate medical care, such that it
18 violated the Eighth Amendment’s prohibition on cruel and unusual punishment. Plaintiff names the
19 following defendants: CDCR Medical Department; Dr. Johnson, M.D.; CMC East Medical Facility;
20 Dr. Chafe; Nurse Ruff, R.N; Physician’s Assistant (PA) Peters; PA Byers; Dr. Kumar.

21 This action proceeds on the original complaint filed on November 25, 2009. Plaintiff alleges
22 that on August 11, 2006, Dr. Johnson performed cataract surgery on Plaintiff. (Compl. ¶ IV.) On
23 August 18, 2006, a lens was inserted into Plaintiff’s left eye by Dr. Johnson. Id. Subsequently,
24 Plaintiff suffered an eye infection. By October 25th, the infection caused Plaintiff “great pain and
25 suffering.” Id. Plaintiff was prescribed eye drops by “the east yard CMC medical clinic.” Plaintiff
26 alleges that “CDCR medical” sent Plaintiff to see the ophthalmologist at CMC. Plaintiff alleges that
27 “CMC sent me to Corcoran and over the period of Aug-11-2006 to 8-26-08 I’ve seen P.A. Peters
28 and P.A. Byers who have done nothing I am totaly [sic] blind.” Id.

1 **A. Venue**

2 Plaintiff indicates that, at the time the complaint was filed, he was housed at Corcoran State
3 Prison. In his complaint, however, he refers to “CMC East Medical” and “east yard medical clinic.”¹
4 At some point, Plaintiff was transferred to CSP Corcoran. The events that give rise to this lawsuit
5 occurred from 2006 to 2008. It is unclear from the allegations where the events at issue occurred.

6 The federal venue statute requires that a civil action, other than one based on diversity
7 jurisdiction, be brought only in “(1) a judicial district where any defendant resides, if all defendants
8 reside in the same state, (2) a judicial district in which a substantial part of the events or omissions
9 giving rise to the claim occurred, or a substantial part of the property that is the subject of the action
10 is situated, or (3) a judicial district in which any defendant may be found, if there is no district in
11 which the action may otherwise be brought.” 28 U.S.C. § 1391(b).

12 The Court cannot discern from the complaint where each defendant is employed, and where
13 each event occurred. Plaintiff must name the individual defendant, describe where that defendant
14 is employed and in what capacity, and explain how that defendant acted under color of state law.
15 Plaintiff should state clearly, in his own words, what happened. Plaintiff must describe what each
16 defendant, *by name*, did to violate the particular right described by Plaintiff.

17 **B. Eighth Amendment Medical Care Claim**

18 To state a claim under section 1983, a plaintiff must allege that (1) the defendant acted under
19 color of state law and (2) the defendant deprived him of rights secured by the Constitution or federal
20 law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person deprives
21 another of a constitutional right, where that person ‘does an affirmative act, participates in another’s
22 affirmative acts, or omits to perform an act which [that person] is legally required to do that causes
23 the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th Cir. 2007)
24 (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite causal connection
25 can be established not only by some kind of direct, personal participation in the deprivation, but also
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27 ¹ Plaintiff does not identify “CMC East Medical Facility.” The Court will not presume whether Plaintiff is
28 referring to the California Men’s Colony in San Luis Obispo. Plaintiff must fully identify any correctional facility
 that he refers to in his complaint.

1 by setting in motion a series of acts by others which the actor knows or reasonably should know
2 would cause others to inflict the constitutional injury.” Id. (quoting Johnson at 743-44).

3 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate
4 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096
5 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97 (1976)). The two part test for deliberate
6 indifference requires Plaintiff to show (1) “‘a serious medical need’ by demonstrating that ‘failure
7 to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton
8 infliction of pain,’” and (2) “the defendant’s response to the need was deliberately indifferent.” Jett,
9 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on
10 other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal
11 quotations omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to
12 a prisoner’s pain or possible medical need, and harm caused by the indifference.” Id. (citing
13 McGuckin, 974 F.2d at 1060).

14 Here, Plaintiff names five individual defendants, but fails to specifically allege conduct by
15 each defendant indicating that they knew of and disregarded a serious risk to Plaintiff’s health,
16 resulting in injury to Plaintiff. Plaintiff makes allegations as to “CMC East medical clinic” and
17 “CDCR Medical,” but fails to charge any individual defendant with conduct indicating that they
18 knew of and disregarded Plaintiff’s condition. Plaintiff alleges that between August of 2006 and
19 2008 he was seen by defendants Byers and Peters and “nothing was done.” The Court finds this
20 allegation to be vague and conclusory. Plaintiff must allege facts indicating what each defendant did
21 or failed to do that caused Plaintiff injury. Plaintiff must also allege the approximate date or dates
22 when each incident of deliberate indifference occurred. Detailed factual allegations are not required,
23 but “[t]hreadbare recitals of the elements of the cause of action, supported by mere conclusory
24 statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009), citing Bell Atlantic Corp.
25 v. Twombly, 550 U.S. 544, 555 (2007). “Plaintiff must set forth sufficient factual matter accepted
26 as true, to ‘state a claim that is plausible on its face.’” Iqbal, 129 S.Ct. at 1949, quoting Twombly,
27 550 U.S. at 555. While factual allegations are accepted as true, legal conclusions are not. Iqbal, 129
28 S.Ct. at 1949. As to defendants Johnson, Chafe, and Ruff, the facts alleged indicate that Plaintiff

1 was seen by them. Although it is clear that Plaintiff is claiming that a failure to adequately treat
2 him caused his injury, Plaintiff must specifically allege facts to support that claim.

3 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051, 1060
4 (9th Cir. 2004). Under this standard, the prison official must not only “be aware of the facts from
5 which the inference could be drawn that a substantial risk of serious harm exists,” but that person
6 “must also draw the inference.” Id. at 1057, (quoting Farmer, 511 U.S. at 837). “If a prison official
7 should have been aware of the risk, but was not, then the official has not violated the Eighth
8 Amendment, no matter how severe the risk.” Id. (quoting Gibson v. County of Washoe, Nevada, 290
9 F.3d 1175, 1188 (9th Cir. 2002). Here, Plaintiff fails to allege facts from which an inference can be
10 drawn that the named defendants knew of the specific harm to Plaintiff, and when they knew of that
11 harm.

12 **C. Eleventh Amendment**

13 “The Eleventh Amendment prohibits federal courts from hearing suits brought against an
14 unconsenting state. Though its language might suggest otherwise, the Eleventh Amendment has
15 long been construed to extend to suits brought against a state both by its own citizens, as well as by
16 citizens of other states.” Brooks v. Sulphur Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th
17 Cir. 1991); see also Seminole Tribe of Florida v. Florida, 517 U.S. 44 (1996); Puerto Rico Aqueduct
18 Sewer Authority v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993); Austin v. State Indus. Ins. Sys.,
19 939 F.2d 676, 677 (9th Cir. 1991).

20 The Eleventh Amendment bars suits against state agencies as well as those where the state
21 itself is named as a defendant. See Natural Resources Defense Council v. California Department of
22 Transportation, 96 F.3d 420, 421 (9th Cir. 1996); Brooks, 951 F.2d at 1053; Taylor v. List, 880 F.2d
23 1040, 1045 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a state agency
24 entitled to Eleventh Amendment immunity); Mitchell v. Los Angeles Community College District,
25 861 F.2d 198, 201 (9th Cir. 1989). As agencies of the state, the California Department of
26 Corrections and Rehabilitation and CMC East Medical Facility are immune from suit.

27 **III. Conclusion and Order**

28 The Court has screened plaintiff’s complaint and finds that it does not state any claims upon

1 which relief may be granted under section 1983. The Court will provide plaintiff with the
2 opportunity to file an amended complaint curing the deficiencies identified by the Court in this order.
3 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he may not
4 change the nature of this suit by adding new, unrelated claims in his amended complaint. George,
5 507 F.3d at 607 (no “buckshot” complaints).

6 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
7 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights,
8 Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual allegations must be
9 [sufficient] to raise a right to relief above the speculative level” Twombly, 127 S.Ct. at 1955.

10 Finally, plaintiff is advised that an amended complaint supercedes the original complaint,
11 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567
12 (9th Cir. 1987), and must be “complete in itself without reference to the prior or superceded
13 pleading,” Local Rule 220. Plaintiff is warned that “[a]ll causes of action alleged in an original
14 complaint which are not alleged in an amended complaint are waived.” King, 814 F.2d at 567 (citing
15 to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord Forsyth, 114 F.3d at
16 1474.

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

- 18 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a claim;
- 19 2. The Clerk’s Office shall send to Plaintiff a complaint form;
- 20 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
21 amended complaint;
- 22 4. Plaintiff may not add any new, unrelated claims to this action via his amended
23 complaint and any attempt to do so will result in an order striking the amended
24 complaint; and
- 25 5. If Plaintiff fails to file an amended complaint, the Court will recommend that this
26 action be dismissed, with prejudice, for failure to state a claim.

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IT IS SO ORDERED.

Dated: October 25, 2010

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE