

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ROBERT WILT,

Plaintiff,

VS.

DR. GREENLEAF, et al.,

Defendants.

1:15-cv-0154 GSA PC

**ORDER DISMISSING COMPLAINT AND
GRANTING PLAINTIFF LEAVE TO FILE
AN AMENDED COMPLAINT**

**AMENDED COMPLAINT DUE
IN THIRTY DAYS**

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

¹ Plaintiff filed a consent to proceed before a magistrate judge on February 6, 2015 (ECF No 5).

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

6 **II. Plaintiff's Claims**

7 Plaintiff, an inmate in the custody of the California Department of Corrections and
8 Rehabilitation (CDCR) at Avenal State Prison, brings this action against defendant correctional
9 officials employed by the CDCR at Avenal. Plaintiff names as defendants Dr. Greenleaf, M.D.,
10 S. Hitchman, M.D. and M. Boparia, M.D. Plaintiff claims that he was denied adequate
11 medical care such that it violated the Eighth Amendment prohibition on cruel and unusual
12 punishment. Plaintiff's statement of claim, in its entirety, follows.

13
14 I have been medically neglected since arriving at Avenal State
15 Prison. While I was in Salinas Valley State Prison I was on
16 morphine and gabapentin for pain. I paroled 8-12-12 came back
with new # therefore I had no medical chart but I did get copies
of old health record to prove facts of pain and have been denied
proper medical since 5-22-13 my arrival at ASP.

17
18 (Comp. ¶ IV.)

19 **Eighth Amendment**

20 Under the Eighth Amendment, the government has an obligation to provide medical
21 care to those who are incarcerated. See Lopez v. Smith, 203 F.3d 1122, 1131 (9th Cir. 2000).
22 “In order to violate the Eighth Amendment proscription against cruel and unusual punishment,
23 there must be a „deliberate indifference to serious medical needs of prisoners.”” Id. (quoting
24 Estelle v. Gamble, 429 U.S. 97, 104 (1976)). Lopez takes a two-prong approach to evaluating
25 whether medical care, or lack thereof, rises to the level of “deliberate indifference.” First, a
26 court must examine whether the plaintiff's medical needs were serious. See Id. Second, a
27 court must determine whether “officials intentionally interfered with [the plaintiff's] medical
28 treatment.” Id. at 1132.

1 Under section 1983, Plaintiff must link the named defendants to the participation in the
2 violation at issue. Ashcroft v. Iqbal, 556 U.S. 662, 676-77 (2009); Simmons v. Navajo County,
3 Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010). Liability may not be imposed under a theory of
4 respondeat superior, and there must exist come causal connection between the conduct of each
5 named defendant and the violation at issue. Iqbal, 556 U.S. at 676-77; Lemire v. California
6 Dep't of Corr. and Rehab., 726 F.3d 1062, 1074-75 (9th Cir. 2013); Starr v. Baca, 652 F.3d
7 1202, 1205-08 (9th Cir. 2011), cert. denied, 132 S.Ct. 2101 (2012). Plaintiff has failed to link
8 any of the named defendants with any specific conduct. Plaintiff may not hold Defendants
9 liable simply by alleging deficient medical care and identifying the defendants. Plaintiff must
10 allege facts indicating that each defendant was aware of a specific harm to Plaintiff, and acted
11 with deliberate indifference to that harm. Plaintiff has failed to do so here. The complaint
12 must therefore be dismissed. Plaintiff will, however, be granted leave to file an amended
13 complaint.

14 Plaintiff need not, however, set forth legal arguments in support of his claims. In order
15 to hold an individual defendant liable, Plaintiff must name the individual defendant, describe
16 where that defendant is employed and in what capacity, and explain how that defendant acted
17 under color of state law. Plaintiff should state clearly, in his own words, what happened.
18 Plaintiff must describe what each defendant, *by name*, did to violate the particular right
19 described by Plaintiff.

20 **III. Conclusion**

21 The Court has screened Plaintiff's complaint and finds that it does not state any claims
22 upon which relief may be granted under section 1983. The Court will provide Plaintiff with the
23 opportunity to file an amended complaint curing the deficiencies identified by the Court in this
24 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he
25 may not change the nature of this suit by adding new, unrelated claims in his amended
26 complaint.

27 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
28 each named defendant did that led to the deprivation of Plaintiff's constitutional or other

1 federal rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the “[f]actual
2 allegations must be [sufficient] to raise a right to relief above the speculative level” Bell
3 Atlantic v. Twombly, 550 U.S. 544, 554 (2007)(citations omitted).

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

11 Accordingly, IT IS HEREBY ORDERED that:

12 1. Plaintiff’s complaint is dismissed, with leave to amend, for failure to state a
13 claim;

14 2. The Clerk’s Office shall send to Plaintiff a complaint form;

15 3. Within **thirty** days from the date of service of this order, Plaintiff shall file an
16 amended complaint;

17 4. Plaintiff may not add any new, unrelated claims to this action via his amended
18 complaint and any attempt to do so will result in an order striking the amended complaint; and

19 5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action,
20 with prejudice, for failure to state a claim.

21
22 IT IS SO ORDERED.
23

24 Dated: May 27, 2015

25 /s/ Gary S. Austin
26 UNITED STATES MAGISTRATE JUDGE
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