

1 his complaint.

2 **I. STATEMENT OF FACTS¹**

3 Plaintiff was an inmate at California State Prison, Corcoran (“CSPC”) during the relevant
4 timeframe. ECF No. 1 at 3. Defendants are employees at CSPC. *Id.* Defendant “Depovic was
5 plaintiff’s [treating] psychiatrist at [CPSC] and [defendant] Grewall was her stand-in.” *Id.*

6 Plaintiff takes Effexor and tryleptal daily for his “diagnosed bi-polar affective [disorder],”
7 and has been doing so for years. *Id.* In August 2017, a nurse and a psych tech separately
8 “informed plaintiff that his Effexor needed to be renewed and he should file a sick call slip asking
9 for a refill.” *Id.* at 3-4. Plaintiff informed the nurse that he had never had to ask for a refill in his
10 years of taking Effexor, but he filled out the slip for a refill “approximately 3 days before it was
11 due to expire.” *Id.* at 4. Plaintiff addressed this first refill request to “Dr. Depovic and/or Dr.
12 Grewall.” *Id.* Plaintiff stated (presumably on the sick call slip) that “he tried to quit Effexor cold
13 turkey and had bad withdrawals and that he is due to run out any day.” *Id.* Neither defendant
14 Depovic nor defendant Grewall answered the sick call slip. *Id.* “Plaintiff wrote sick call slips
15 begging and pleading each day leading up until the day his meds expired . . . to no avail.” *Id.*

16 Plaintiff ran out of Effexor. On his second day without his medicine, he become ill, with
17 symptoms including sweats, chills, stomach aches, nausea, headaches, and cramps, “which lasted
18 approximately 5 days.” *Id.* Plaintiff “started having suicidal thoughts and cut on hi[m]self
19 repeatedly, all the while plaintiff put in [sick call slips] for refills.” *Id.* While plaintiff was off his
20 medicine, he violated the rules by holding open his food tray slot. *Id.* at 5. Because of this
21 behavior, “plaintiff had to get a serious rules violation report write up which took away good time
22 credits from his sentence.” *Id.* Plaintiff committed this rules violation “just to have officers
23 contact a psychiatrist to give plaintiff his meds.” *Id.*

24 Defendants Bell, McCabe, and Lewis “created a policy” that inmates “must first
25 experience the adverse effect such as deprivation of psych meds before any action is taken. Their
26 policy also finds no wrongdoing when doctors . . . do not renew their patients’ meds knowing the

27 ¹ We draw the following facts from plaintiff’s complaint, ECF No. 1, and accept them as true for
28 screening purposes.

1 side effects will be painful withdraws for at least a week followed by severe depression.” *Id.* at 4.

2 **II. SCREENING AND PLEADING REQUIREMENTS**

3 A district court must screen a prisoner’s complaint that seeks relief against a governmental
4 entity, its officer, or its employee. *See* 28 U.S.C. § 1915A(a). The court must identify any
5 cognizable claims and dismiss any portion of the complaint that is frivolous or malicious, fails to
6 state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is
7 immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2).

8 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
9 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
10 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
11 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
12 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
13 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
14 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
15 1038 (9th Cir. 2016) (quoting *Skinner v. Switzer*, 562 U.S. 521, 530 (2011)). Instead, what
16 plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to
17 relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)
18 (citations omitted).

19 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
20 U.S. 519, 520 (1972) (per curiam). However, the court may dismiss a pro se litigant’s complaint
21 “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim
22 which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir.
23 2017) (quoting *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)).

24 **III. DISCUSSION**

25 Section 1983 allows a private citizen to sue for the deprivation of a right secured by
26 federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To
27 state a claim under § 1983, a plaintiff must show that a defendant acting under color of state law
28 caused an alleged deprivation of a right secured by federal law. *See* 42 U.S.C. § 1983; *Soo Park*

1 *v. Thompson*, 851 F.3d 910, 921 (9th Cir. 2017). The plaintiff can satisfy the causation
2 requirement by showing either (1) the defendant’s “personal involvement” in the alleged
3 deprivation or (2) a “sufficient causal connection” between the defendant’s conduct as a
4 supervisor and the alleged deprivation. *See King v. Cty. of Los Angeles*, 885 F.3d 548, 559 (9th
5 Cir. 2018). As for the second method, the plaintiff can establish a causal connection by showing
6 that the defendant “set[] in motion a series of acts by others, or by knowingly refus[ing] to
7 terminate a series of acts by others,” which the defendant “knew or reasonably should have
8 known would cause others to inflict a constitutional injury.” *Id.*

9 All of the named defendants are state-prison employees who, accepting plaintiff’s
10 allegations as true, can be inferred to have acted under color of state law. *See Paeste v. Gov’t of*
11 *Guam*, 798 F.3d 1228, 1238 (9th Cir. 2015) (“[G]enerally, a public employee acts under color of
12 state law while acting in his official capacity or while exercising his responsibilities pursuant to
13 state law.” (quoting *West v. Atkins*, 487 U.S. 42, 50 (1988))). We next consider whether plaintiff
14 alleged sufficient facts to satisfy the causation requirement.

15 Plaintiff plausibly alleges that defendants Depovic and Grewall personally participated in
16 or caused the alleged deprivations. However, plaintiff does not plausibly allege that defendants
17 Bell, McCabe, and Lewis personally participated in or caused the alleged deprivations; instead,
18 plaintiff seems to rely on a theory of vicarious liability. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937,
19 1948 (2009) (“[V]icarious liability is inapplicable to Bivens and § 1983 suits[;] a plaintiff must
20 plead that each Government-official defendant, through the official’s own individual actions, has
21 violated the Constitution.”). Beyond naming these defendants in the complaint, plaintiff alleges
22 that defendants Bell, McCabe, and Lewis created a policy. This allegation does not satisfy the
23 causation requirement of § 1983 because the alleged action of these defendants was not “the
24 moving force of the behind the constitutional violation.” *Navarro v. Herndon*, 2016 WL
25 8731088, at *13 (E.D. Cal. Mar. 25, 2016) (“Ratification of an unconstitutional act by superiors
26 after the fact will only support liability when the superiors’ past actions were the moving force
27 behind the constitutional violation in the first place.” (citing *Williams v. Ellington*, 936 F.2d 881,
28 884-85 (9th Cir. 1991))). Accordingly, plaintiff fails to allege causation for these defendants as

1 required to bring a claim under § 1983.

2 The remaining question is whether defendants Depovic and Grewall’s alleged actions
3 violated federal law. Plaintiff seeks to bring claims for Eighth Amendment medical deliberate
4 indifference and violation of the California Bane Act. We analyze each in turn.

5 **A. Medical Deliberate Indifference**

6 Plaintiff alleges that defendants Depovic and Grewall acted with deliberate indifference to
7 his serious medical needs when they failed to renew his medicine prescription for eight days,
8 causing plaintiff to experience withdrawal symptoms and commit a rules violation.

9 The government has an “obligation to provide medical care for those whom it is punishing
10 by incarceration,” and “deliberate indifference to serious medical needs of prisoners constitutes
11 the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.” *Estelle v.*
12 *Gamble*, 429 U.S. 97, 103-04 (1976) (internal citation omitted) (quoting *Gregg v. Georgia*, 428
13 U.S. 153, 173 (1976)). This indifference can be “manifested by prison doctors in their response
14 to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical
15 care or intentionally interfering with the treatment once prescribed.” *Id.* at 104-05 (footnotes
16 omitted).

17 There is a two-part test for deliberate indifference: “First, the plaintiff must show a serious
18 medical need by demonstrating that failure to treat a prisoner’s condition could result in further
19 significant injury or the unnecessary and wanton infliction of pain. Second, the plaintiff must
20 show the defendant’s response to the need was deliberately indifferent.” *Wilhelm v. Rotman*, 680
21 F.3d 1113, 1122 (9th Cir. 2012) (internal quotation marks and citation omitted). “This second
22 prong—defendant’s response to the need was deliberately indifferent—is satisfied by showing (a)
23 a purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b) harm
24 caused by the indifference.” *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal
25 citations omitted).

26 The complaint alleges facts to support the conclusion that plaintiff had a serious medical
27 need—given his bipolar affective disorder. *See McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th
28 Cir. 1992) (“The existence of an injury that a reasonable doctor or patient would find important

1 and worthy of comment or treatment; the presence of a medical condition that significantly
2 affects an individual's daily activities; or the existence of chronic and substantial pain are
3 examples of indications that a prisoner has a 'serious' need for medical treatment.”), *overruled on*
4 *other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc).

5 Therefore, plaintiff has adequately pled a serious medical need.

6 Plaintiff alleges that defendants Depovic and Grewall were responsible for his bipolar
7 affective disorder treatment, including refilling his medicine; were informed through multiple
8 medical slips that plaintiff's medicine ran out; and failed to provide him with medicine, causing
9 withdrawal symptoms and eventually driving plaintiff to commit a serious rules violation report
10 to get their attention. These allegations are sufficient to state a claim for medical deliberate
11 indifference. *See* Fed. R. Civ. P. 8(a).

12 **B. Bane Act**

13 California's Tom Bane Civil Rights Act ("Bane Act") creates a private right of action for
14 anyone whose exercise of constitutional rights is interfered with, or attempted to be interfered
15 with, "by threat, intimidation, or coercion." Cal. Civ. Code § 52.1(b)-(c). Thus, a Bane Act
16 claim requires plaintiff to show "an attempted or completed act of interference with a legal right,
17 accompanied by a form of coercion." *Jones v. Kmart Corp.*, 17 Cal. 4th 329, 334 (1998).

18 Plaintiff has not stated a cognizable claim for violation of the Bane Act. Plaintiff alleges
19 that defendants Depovic and Grewall acted with medical deliberate indifference when they failed
20 to provide him with his medicine, but plaintiff has not alleged any facts that indicate "threat,
21 intimidation, or coercion" on the part of any defendant. *See* Cal. Civ. Code § 52.1(b)-(c).

22 **IV. CONCLUSION**

23 The court has screened plaintiff's complaint and finds that plaintiff has stated a medical
24 deliberate indifference claim against defendants Depovic and Grewall. We recommend that
25 plaintiff's remaining claims be dismissed without prejudice and that plaintiff be granted leave to
26 amend the complaint.

27 Should plaintiff choose to amend the complaint, the amended complaint should be brief,
28 Fed. R. Civ. P. 8(a), but must state what each named defendant did that led to the deprivation of

1 plaintiff's constitutional or other federal rights. *See Iqbal*, 556 U.S. at 678; *Jones v. Williams*,
2 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must set forth "sufficient factual matter . . . to 'state a
3 claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S.
4 at 570). There is no *respondeat superior* liability, and each defendant is only liable for his or her
5 own misconduct. *See id.* at 677. Plaintiff must allege that each defendant personally participated
6 in the deprivation of his rights. *Jones*, 297 F.3d at 934 (emphasis added). Plaintiff should note
7 that a short, concise statement of the allegations in chronological order will assist the court in
8 identifying his claims. Plaintiff should name each defendant and explain what happened,
9 describing personal acts by the individual defendant that resulted in the violation of plaintiff's
10 rights. Plaintiff should also describe any harm he suffered from the violation of his rights.
11 Plaintiff should not fundamentally alter his complaint or add unrelated issues. *See Fed. R. Civ. P.*
12 *18; George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) ("Unrelated claims against different
13 defendants belong in different suits . . .").

14 Any amended complaint will supersede the original complaint, *Lacey v. Maricopa*
15 *County*, 693 F. 3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be complete on its face
16 without reference to the prior, superseded pleading, *see* E.D. Cal. Local Rule 220. Once an
17 amended complaint is filed, the original complaint no longer serves any function in the case.
18 Therefore, in an amended complaint, as in an original complaint, each claim and the involvement
19 of each defendant must be sufficiently alleged. The amended complaint should be titled "First
20 Amended Complaint," refer to the appropriate case number, and be an original signed under
21 penalty of perjury.

22 **IV. ORDER**

23 The clerk of court is directed to assign this case to a district judge, who will preside over
24 this case. The undersigned will remain as the magistrate judge assigned to the case.

25 **V. RECOMMENDATIONS**

26 Under 28 U.S.C. § 636(c)(1), all parties named in a civil action must consent to a
27 magistrate judge's jurisdiction before that jurisdiction vests for "dispositive decisions." *Williams*
28 *v. King*, 875 F.3d 500, 504 (9th Cir. 2017). No defendant has appeared or consented to a

1 magistrate judge's jurisdiction, so any dismissal of a claim requires an order from a district judge.

2 *Id.* Thus, the undersigned submits the following findings and recommendations to a United
3 States District Judge under 28 U.S.C. § 636(b)(1):

- 4 1. Plaintiff states a medical deliberate indifference claim against defendants Depovic and
5 Grewall.
- 6 2. Plaintiff's remaining claims and all other defendants should be dismissed without
7 prejudice, and plaintiff should be granted leave to amend the complaint.
- 8 3. If plaintiff files an amended complaint, defendants Bell, Lewis, and McCabe need not
9 respond until the court screens the amended complaint.

10 Within fourteen days of service of these findings and recommendations, the parties may
11 file written objections with the court. If the parties file such objections, they should do so in a
12 document captioned "Objections to Magistrate Judge's Findings and Recommendations." The
13 parties are advised that failure to file objections within the specified time may result in the waiver
14 of rights on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing
15 *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

16
17 IT IS SO ORDERED.

18
19 Dated: April 2, 2019


UNITED STATES MAGISTRATE JUDGE

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21
22 No. 204