

1 with leave to amend.¹ ECF No. 11.

2 On April 15, 2019, plaintiff filed his first amended complaint, ECF No. 12, which is now
3 before the court for screening under 28 U.S.C. § 1915A. We again find that plaintiff has stated
4 claims of medical deliberate indifference against defendants Depovic and Grewall. Plaintiff has
5 stated no other claims.

6 We will vacate the April 2, 2019 findings and recommendations and recommend that
7 plaintiff's cognizable claims proceed, and that his non-cognizable claims be dismissed.
8 Plaintiff's first amended complaint omits three of the defendants from his original complaint:
9 Bell, Lewis, and McCabe. Therefore, we recommend dismissal of these defendants. Plaintiff
10 names two new defendants in his first amended complaint: Gates and Harris. However, he fails
11 to state a claim against either of these new defendants, so we recommend that they be dismissed
12 for the reasons stated below. We recommend that plaintiff be allowed to proceed only on his
13 claims for medical deliberate indifference against defendants Depovic and Grewall, and that all
14 other claims and defendants be dismissed.

15 **I. STATEMENT OF FACTS²**

16 Plaintiff was an inmate at California State Prison, Corcoran ("CSPC") during the relevant
17 timeframe. ECF No. 12 at 3. Defendants are employees at CSPC. *Id.* at 2. Defendant "Depovic
18 was plaintiff's treating psychiatrist at CPSC and defendant Grewall was her stand-in." *Id.* at 3.

19 Plaintiff takes Effexor and Tryleptal daily for his diagnosed bi-polar affective
20 disorder and has been doing so for years. In August 2017, a nurse and a psych
21 tech separately informed plaintiff that his Effexor needed to be renewed and he
22 should file a sick call slip asking for a refill. Plaintiff informed the nurse that he
23 [had] never had to ask for a refill in his years of taking Effexor, but he filled out
24 the slip for a refill approximately 3 days before it was due to expire. Plaintiff
25 addressed this first refill request to Dr. Depovic and/or Dr. Grewall. Plaintiff
26 stated on the sick call slip that he tried to quit Effexor cold turkey and had bad
27 withdrawals and that he is due to run out any day. Neither defendant Depovic nor
28 defendant Grewall answered the sick call slip. Plaintiff wrote sick call slips
begging and pleading each day leading up until the day his meds expired to no
avail.

26 ¹ On April 1, 2019, we received plaintiff's motion requesting that the court screen his complaint.
27 ECF No. 10. We will deny this motion as moot.

28 ² We draw the following facts from plaintiff's first amended complaint, ECF No. 12, and accept
them as true for screening purposes.

1 Plaintiff ran out of Effexor and Tryelptal. On his second day without his
2 medicine, he become ill, with symptoms including sweats, chills, stomach aches,
3 nausea, headaches, and cramps, which lasted approximately 5 days. Plaintiff
4 started having . . . suicidal thoughts and cut on himself repeatedly, all the while
5 plaintiff put in sick call slips for refills. While plaintiff was off his medicine, he
6 violated the rules by holding open his food tray slot. Because of this behavior,
7 plaintiff had to get a serious rules violation report [(“RVR”)] write up which took
8 away good time credits from his sentence. Prior to this RVR he went nearly two
9 years without a write up. Plaintiff committed this rule violation just to have
10 officers contact a psychiatrist to give plaintiff his meds which were given to him
11 and renewed immediately by another psychiatrist.

12 When plaintiff confronted Dr. Depovic about her omissions she said well maybe
13 you should get a different psychiatrist which plaintiff took as a threat that she
14 would fail to renew his meds again in the near future, intimidate him into seeking
15 adequate medical attention by requesting a new psychiatrist or coercing him into
16 requesting a different psychiatrist

17 *Id.* at 3-4.

18 Defendant Gates is the “Chief Policy Corresponden[t]” and defendant Harris is the
19 “Reviewing Authority” at CSPC. *Id.* at 2. These defendants knew that defendants Depovic and
20 Grewall “were the only psychiatrists for the whole yard.” *Id.* at 5. Defendants Gates and Harris
21 apparently issued “responses” to plaintiff indicating that defendants Depovic and Grewall did not
22 violate policy, and plaintiff alleges that Gates and Harris’ actions violated policy. *See id.* “Due
23 to defendants’ S. Gates and S. Harris failure to intervene, plaintiff’s Tryleptals were cut off again
24 in early 2018” *Id.* at 6. This medicine helped treat plaintiff’s psychiatric symptoms as well
25 as provide chronic pain management from a shoulder surgery. *See id.* Without this medicine,
26 plaintiff has “experienced sleep deprivation because it hurts when he lays any pressure on that
27 shoulder.” *Id.* The pain is “so bad at times it effects his daily activities” as well. *Id.* Plaintiff
28 further alleges that defendant Harris coerced defendant Gates “into believing no intervention is
necessary.” *Id.*

29 **II. SCREENING AND PLEADING REQUIREMENTS**

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

1 A complaint must contain a short and plain statement that plaintiff is entitled to relief,
2 Fed. R. Civ. P. 8(a)(2), and provide “enough facts to state a claim to relief that is plausible on its
3 face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plausibility standard does not
4 require detailed allegations, but legal conclusions do not suffice. *See Ashcroft v. Iqbal*, 556 U.S.
5 662, 678 (2009). If the allegations “do not permit the court to infer more than the mere
6 possibility of misconduct,” the complaint states no claim. *Id.* at 679. The complaint need not
7 identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024,
8 1038 (9th Cir. 2016) (quoting *Skinner v. Switzer*, 562 U.S. 521, 530 (2011)). Instead, what
9 plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to
10 relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 n.2 (9th Cir. 2006) (en banc)
11 (citations omitted).

12 The court must construe a pro se litigant’s complaint liberally. *See Haines v. Kerner*, 404
13 U.S. 519, 520 (1972) (per curiam). However, the court may dismiss a pro se litigant’s complaint
14 “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim
15 which would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir.
16 2017) (quoting *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014)).

17 **III. DISCUSSION**

18 Section 1983 allows a private citizen to sue for the deprivation of a right secured by
19 federal law. *See* 42 U.S.C. § 1983; *Manuel v. City of Joliet, Ill.*, 137 S. Ct. 911, 916 (2017). To
20 state a claim under § 1983, a plaintiff must show that a defendant acting under color of state law
21 caused an alleged deprivation of a right secured by federal law. *See* 42 U.S.C. § 1983; *Soo Park*
22 *v. Thompson*, 851 F.3d 910, 921 (9th Cir. 2017). The plaintiff can satisfy the causation
23 requirement by showing either (1) the defendant’s “personal involvement” in the alleged
24 deprivation or (2) a “sufficient causal connection” between the defendant’s conduct as a
25 supervisor and the alleged deprivation. *See King v. Cty. of Los Angeles*, 885 F.3d 548, 559 (9th
26 Cir. 2018). As for the second method, the plaintiff can establish a causal connection by showing
27 that the defendant “set[] in motion a series of acts by others, or by knowingly refus[ing] to
28 terminate a series of acts by others,” which the defendant “knew or reasonably should have

1 known would cause others to inflict a constitutional injury.” *Id.*

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

8 Plaintiff plausibly alleges that defendants Depovic and Grewall personally participated in
9 or caused the alleged deprivations. However, plaintiff does not plausibly allege that defendants
10 Harris and Gates personally participated in or caused the alleged deprivations; instead, plaintiff
11 seems to rely on a theory of vicarious liability. *See Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1948
12 (2009) (“[V]icarious liability is inapplicable to Bivens and § 1983 suits[;] a plaintiff must plead
13 that each Government-official defendant, through the official’s own individual actions, has
14 violated the Constitution.”). Beyond naming these defendants in the complaint, plaintiff alleges
15 only that defendants Harris and Gates failed to interfere to stop Depovic and Grewall’s abuses.
16 These allegations do not satisfy the causation requirement of § 1983 because the alleged action of
17 these defendants was not “the moving force behind the constitutional violation.” *Navarro v.*
18 *Herndon*, 2016 WL 8731088, at *13 (E.D. Cal. Mar. 25, 2016) (citing *Williams v. Ellington*, 936
19 F.2d 881, 884-85 (9th Cir. 1991)). Accordingly, plaintiff fails to allege causation for these
20 defendants as required to bring a claim under § 1983.

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

24 **A. Medical Deliberate Indifference**

25 Plaintiff alleges that defendants Depovic and Grewall acted with deliberate indifference to
26 his serious medical needs when they failed to renew his medicine prescription, causing plaintiff to
27 experience withdrawal symptoms and commit a rules violation.

28 The government has an “obligation to provide medical care for those whom it is punishing

1 by incarceration,” and “deliberate indifference to serious medical needs of prisoners constitutes
2 the ‘unnecessary and wanton infliction of pain’ proscribed by the Eighth Amendment.” *Estelle v.*
3 *Gamble*, 429 U.S. 97, 103-04 (1976) (internal citation omitted) (quoting *Gregg v. Georgia*, 428
4 U.S. 153, 173 (1976)). This indifference can be “manifested by prison doctors in their response
5 to the prisoner’s needs or by prison guards in intentionally denying or delaying access to medical
6 care or intentionally interfering with the treatment once prescribed.” *Id.* at 104-05 (footnotes
7 omitted).

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

17 The complaint alleges facts to support the conclusion that plaintiff had a serious medical
18 need—given his bipolar affective disorder. *See McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th
19 Cir. 1992) (“The existence of an injury that a reasonable doctor or patient would find important
20 and worthy of comment or treatment; the presence of a medical condition that significantly
21 affects an individual’s daily activities; or the existence of chronic and substantial pain are
22 examples of indications that a prisoner has a ‘serious’ need for medical treatment.”), *overruled on*
23 *other grounds by WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc).
24 Therefore, plaintiff has adequately pled a serious medical need.

25 Plaintiff alleges that defendants Depovic and Grewall were responsible for his bipolar
26 affective disorder treatment, including refilling his medicine; were informed through multiple
27 medical slips that plaintiff’s medicine ran out; and failed to provide him with medicine, causing
28 withdrawal symptoms and eventually driving plaintiff to commit a serious rules violation to get a

1 psychiatrist's attention. These allegations are sufficient to state a claim for medical deliberate
2 indifference. *See* Fed. R. Civ. P. 8(a).

3 **B. Bane Act**

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

9 Plaintiff has not stated a cognizable claim for violation of the Bane Act. Plaintiff alleges
10 that defendants Depovic and Grewall acted with medical deliberate indifference when they failed
11 to provide him with his medicine, but plaintiff has not alleged any facts that indicate "threat,
12 intimidation, or coercion" on the part of either defendant. *See* Cal. Civ. Code § 52.1(b)-(c).
13 Plaintiff's argument that defendant Depovic's comment that plaintiff should get another
14 psychiatrist states a claim under the Bane Act is not sufficient because that remark, even if
15 construed to be a threat, did not interfere with plaintiff's constitutional rights. *See* Cal. Civ. Code
16 § 52.1(b)-(c). Rather, plaintiff's constitutional claim stems from defendants' failure to provide
17 him with medicine necessary to treat his conditions, and the resulting harms.

18 **IV. CONCLUSION**

19 The court has screened plaintiff's complaint and finds that plaintiff has stated a medical
20 deliberate indifference claim against defendants Depovic and Grewall. We recommend that
21 plaintiff's remaining claims be dismissed.

22 **IV. ORDER**

23 The April 2, 2019, findings and recommendations in this case, ECF No. 11, are hereby
24 vacated. Plaintiff's motion to have his case screened, ECF No. 10, is denied as moot.

25 **V. FINDINGS AND 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.

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

14
15 IT IS SO ORDERED.

16
17 Dated: August 2, 2019


UNITED STATES MAGISTRATE JUDGE

18
19
20
21 No. 204

22
23
24
25
26
27
28