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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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11 MARK A. FREGIA,

12 Plaintiff,

13 v.  
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15 YUCUI CHEN, et al.,

16 Defendants.

Case No. 1:20-cv-01024-DAD-EPG (PC)

ORDER VACATING FINDINGS AND  
RECOMMENDATIONS ENTERED ON  
NOVEMBER 19, 2020, AND GRANTING  
PLAINTIFF LEAVE TO FILE A FIRST  
AMENDED COMPLAINT

(ECF No. 9)

17 Plaintiff Mark A. Fregia ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
18 *pauperis* in this action.

19 Plaintiff initiated this action on July 24, 2020, by filing a complaint alleging claims  
20 against Dr. Yucui Chen, Lisa Gosso, Dr. Marcy Johnson, Dr. Tirath Gill, C. Cryer, and S. Gates  
21 for violation of Plaintiff's constitutional rights under the First and Eighth Amendments related to  
22 the discontinuation of Plaintiff's Effexor prescription resulting in painful withdrawals and  
23 suicidal ideation. (ECF No. 1.) The Court screened Plaintiff's complaint and found that it stated a  
24 cognizable claim against Defendant Gosso for deliberate indifference to serious medical needs in  
25 violation of the Eighth Amendment. (ECF No. 6.) The Court also found that Plaintiff failed to  
26 state any other claims. (*Id.*)

27 The Court gave Plaintiff thirty days to either: "a. File a First Amended Complaint; b.  
28 Notify the Court in writing that he does not want to file an amended complaint, and instead wants

1 to proceed only on the claim against Lisa Gosso for deliberate indifference to serious medical  
2 needs; or c. Notify the Court in writing that he does not want to go forward on only the claims  
3 found cognizable by this order or file an amended complaint.” (*Id.* at 12-13.) On November 2,  
4 2020, Plaintiff filed his response to the Court’s screening order. (ECF No. 7.) Plaintiff stated that  
5 he wanted to stand on his original complaint and requested that the Court issue findings and  
6 recommendations to a district judge consistent with the screening order. (*Id.*)

7 On November 19, 2020, the Court entered findings and recommendations recommending  
8 that this action proceed on Plaintiff’s claims against Defendant Gosso for deliberate indifference  
9 to serious medical needs in violation of the Eighth Amendment and that all other claims and  
10 defendants be dismissed. (ECF No. 9.) Plaintiff was provided an opportunity to file objections to  
11 the findings and recommendations.

12 After being given an extension of time, Plaintiff filed his objections on February 8, 2021.  
13 (ECF No. 12.) In his objections, Plaintiff relies on factual allegations that were not included in  
14 Plaintiff’s complaint. For example, Plaintiff alleges that even though Defendant Gosso  
15 intentionally misled Dr. Chen in order to get her to cancel Plaintiff’s prescription for Effexor, Dr.  
16 Chen acted outside institutional and pharmaceutical protocols in doing so. (*Id.* at 2.) Dr. Chen had  
17 just renewed Plaintiff’s prescription the previous day and knew the protocol for discontinuing  
18 Effexor at high doses using a “step down” method by gradually reducing the dosage to prevent  
19 painful withdrawal symptoms that could lead to suicidal ideation. (*Id.* at 2-3.) Dr. Johnson, in  
20 turn, was Plaintiff’s psychologist/case manager and Plaintiff immediately notified her when his  
21 prescription was abruptly canceled. (*Id.* at 4.) Dr. Johnson failed to take proper action to the  
22 urgent nature of Plaintiff’s medication problem, refused to contact Dr. Chen, and refused to make  
23 an emergency referral to someone qualified to properly address the problem. (*Id.*) Dr. Johnson  
24 was not qualified to decide that Plaintiff’s problem did not require immediate attention, yet she  
25 told Plaintiff that he would have to wait until Dr. Chen returned in three days. (*Id.*)

26 Plaintiff’s objections contain new factual allegations that were not included in the original  
27 complaint. (*See* ECF No. 1.) These factual allegations may be relevant to whether Plaintiff is able  
28 to state a claim for deliberate indifference to serious medical needs against Dr. Johnson and Dr.

1 Chen. However, the Court cannot consider factual allegations in Plaintiff's objections in deciding  
2 whether Plaintiff has stated any legal claims.

3 The Court will therefore vacate the findings and recommendations entered on November  
4 19, 2020, and grant Plaintiff leave to file an amended complaint. If Plaintiff chooses to file an  
5 amended complaint, he should include all factual allegations against Dr. Johnson and Dr. Chen  
6 related to his claim for deliberate indifference to serious medical needs. He should also include  
7 all factual allegations and claims against other defendants that were already found cognizable. If  
8 Plaintiff does not include facts in his amended complaint, they will not be considered in  
9 determining if Plaintiff's amended complaint states any claims.

10 If Plaintiff files an amended complaint, the Court will screen that complaint in due course.  
11 Plaintiff should note that although he has been given the opportunity to amend, it is not for the  
12 purpose of changing the nature of this suit or adding unrelated claims. *George v. Smith*, 507 F.3d  
13 605, 607 (7th Cir. 2007) (no "buckshot" complaints). Additionally, Plaintiff is advised that an  
14 amended complaint supersedes the original complaint, *Lacey v. Maricopa County*, 693 F.3d. 896,  
15 907 n.1 (9th Cir. 2012) (*en banc*), and must be complete in itself without reference to the prior or  
16 superseded pleading, Local Rule 220. Therefore, in an amended complaint, as in an original  
17 complaint, each claim and the involvement of each defendant must be sufficiently alleged. The  
18 amended complaint should be clearly and boldly titled "First Amended Complaint," refer to the  
appropriate case number, and be an original signed under penalty of perjury.

19 Accordingly, IT IS HEREBY ORDERED that:

- 20 1. The findings and recommendations entered on November 19, 2020 (ECF No. 9) are  
21 VACATED;  
22 2. The Clerk of Court shall send Plaintiff a civil rights complaint (prisoner complaint  
23 form); and

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3. Within thirty (30) days from the date of service of this order, Plaintiff may file a First Amended Complaint. Plaintiff shall caption the amended complaint “First Amended Complaint” and refer to the case number 1:20-cv-01024-EPG.

IT IS SO ORDERED.

Dated: February 17, 2021

/s/ Eric P. Gray  
UNITED STATES MAGISTRATE JUDGE