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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WAYNE WRIGHT,)	No. 2:08-cv-00280-SPK
)	
Plaintiff,)	
)	
v.)	
)	
CORRECTIONAL HEALTH)	
SERVICES, ET AL.)	
)	
Defendants.)	

ORDER DENYING REQUEST TO PROCEED IN FORMA PAUPERIS
WITHOUT PREJUDICE, AND DISMISSING COMPLAINT WITH
LEAVE TO AMEND

Plaintiff Wayne Wright is a state prisoner proceeding pro se. Plaintiff seeks relief for alleged civil rights violations pursuant to 42 U.S.C. § 1983. He has filed a request for leave to proceed *in forma pauperis* (IFP) pursuant to 28 U.S.C. § 1915.

I.

Title 28 U.S.C. § 1915 provides in pertinent part as follows:

[(a)](2) A prisoner seeking to bring a civil action or appeal a judgment in a civil action or proceeding without prepayment of fees or security therefor, in addition to filing the affidavit filed under paragraph (1), shall submit a certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the 6-month period immediately preceding the filing of the complaint or notice of appeal,

1 obtained from the appropriate official of each prison at which the
2 prisoner is or was confined.

3 (b)(1) Notwithstanding subsection (a), if a prisoner brings a civil
4 action or files an appeal in forma pauperis, the prisoner shall be
5 required to pay the full amount of a filing fee. The court shall assess
6 and, when funds exist, collect, as a partial payment of any court fees
7 required by law, an initial partial filing fee of 20 percent of the greater
8 of--

9 (A) the average monthly deposits to the prisoner's account; or

10 (B) the average monthly balance in the prisoner's account for the
11 6-month period immediately preceding the filing of the complaint or
12 notice of appeal.

13 (2) After payment of the initial partial filing fee, the prisoner shall be
14 required to make monthly payments of 20 percent of the preceding
15 month's income credited to the prisoner's account. The agency having
16 custody of the prisoner shall forward payments from the prisoner's
17 account to the clerk of the court each time the amount in the account
18 exceeds \$10 until the filing fees are paid.

19 Here, Plaintiff submitted an amended application to proceed IFP that was
20 was processed in another case he had filed in this court (08-cv-00267-MCE). The
21 application was granted in that other case (08-cv-00267-MCE). Some confusion
22 arose because it was not clear whether the application was meant for this case (08-
23 cv-00280) as well. The application was docketed in both cases, but was given a
24 case number in the other case 08-cv-0267-MCE. A review of the docket sheet in
25 the other case (08-cv-00267-MCE) indicates the order granting that IFP application
26 was returned as undeliverable or as having been sent to the wrong address. The
27 Court will proceed in this case with the assumption that Plaintiff intended to
28 submit the identical IFP application in both cases.

The amended IFP application contains a financial statement of Plaintiff from
the Glenn County Jail in Willows, California. However, in a letter submitted with
the application or applications, Plaintiff wrote that "I am no longer at the jail in
Sacramento[.]" [Doc. 7, letter dated 3-15-08, at 1]. Plaintiff gave a change of

1 address and stated “I would ask that I receive notice at my home address that all
2 correspondence has been delivered.” [Id. at 2]. Earlier (a month before his
3 amended IFP application was submitted), court mail addressed to Plaintiff at his
4 place of incarceration had been returned to the court indicating “not in custody.”
5 [Doc. 4]. Later, in September 2008, Plaintiff gave the court another change of
6 address at a different private residence in California. [Doc. 9].

7 The case was then eventually re-assigned to the undersigned as a visiting
8 district judge. In January of 2009, the court received a new filing in the other case
9 (08-cv-00267) but not in this case (08-cv-00280-SPK) indicating a change of
10 address and indicating that Plaintiff was now incarcerated or had been transferred
11 to a correctional institution in Cumberland, Maryland. That filing (in 08-cv-
12 00267) indicated that Plaintiff had been “transferred” to the facility in Maryland.
13 An order re-assigning this case has been sent to the new address at the Western
14 Correctional Institute in Cumberland, Maryland.

15 It appears that the amended IFP application is incomplete, or was
16 inapplicable if Plaintiff was not in custody when submitted. In any event, the
17 Court cannot apply the IFP statute based upon the currently-pending application.
18 The IFP statute requires an assessment of an initial partial payment of 20 percent
19 based upon average monthly balances for the prior 6-month period. 28 U.S.C.
20 § 1915(b)(1)(A) & (B). It requires the agency having custody of the prisoner to
21 forward payments each time the amount in the prisoner’s current account exceeds
22 \$10. 28 U.S.C. § 1915(b)(2). This cannot be done without information from the
23 current custodian in Maryland.

24 Accordingly, the Court will DENY the application to proceed IFP, but the
25 denial will be without prejudice. The Clerk shall mail plaintiff a copy of the IFP
26 application form and Plaintiff may choose to file a new application. The Court will
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1 impose a deadline of 30 days from the service of this order within which to re-file
2 an amended IFP application. If this deadline is not met, the action will be subject
3 to dismissal without prejudice.

4 II.

5 The court is required to screen complaints brought by prisoners seeking
6 relief against a government entity or officer or employee of a government entity.
7 28 U.S.C. § 1915A(a). Although the required filing fee has not yet been paid (or
8 the IFP application remains pending), the court has nevertheless screened the
9 complaint to determine whether it sufficiently states a claim. Having done so, the
10 Court now DISMISSES the complaint with LEAVE TO AMEND.

11 Plaintiff alleges that a variety of Defendants violated constitutional rights
12 with regard to taking away his cane. He alleges he was an inmate at the
13 Sacramento County main jail when the complaint was filed. He has named
14 Correctional Health Services, Dr. Dietrich (Chief Medical Doctor), Dr. Smith, Dr.
15 Tomkin, Dr. Mabeus, “LVN [nurse] Suzanne,” LVN Kathryn Gonzales, Sheriff of
16 Sacramento County (Sheriff John McGuinness), Deputy Kendrick, Lt. Blea, and
17 Deputy Larkin. He alleges that Correctional Health Services is the contracted
18 health care provider.

19 He alleges that the doctors and nurses intentionally deprived him of his
20 Eighth Amendment rights, and willfully and intentionally caused cruel and unusual
21 punishment, and were deliberately indifferent to their wanton infliction of pain and
22 torture. He alleges that Sheriff McGuinness and his deputies aided and abetted these
23 deprivations.

24 He alleges he was arrested on June 5, 2007, when he was housed in a
25 medical unit with a cane. He stayed until August 27, 2007 with a cane. He alleges
26 he returned to jail on November 5, 2007 (apparently he had been released in the
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1 meantime). When he returned, he was again placed in a medical unit with a cane.
2 He alleges that on November 9, 2007, Defendant LVN (licensed vocational nurse)
3 “Suzanne (Last Name Unknown)” took away his cane without reviewing his
4 medical charts. He alleges that, after a complaint, Dr. Tomkin determined he
5 needed his cane. He further alleges that, after Nurse Suzanne later stated falsely
6 that she saw him walking without a cane, Dr. Tomkin took away his cane without
7 examining him “on the word of Nurse Suzanne.” He alleges that this amounted to
8 gross negligence and malpractice, and violated his Eighth Amendment rights. He
9 claims that no doctor has examined him regarding his cane, as of the time of filing
10 the complaint.

11 He further alleges that Nurse Suzanne has caused 3 other black inmates to
12 have lost their canes. He claims a conspiracy between Suzanne and Nurse
13 Gonzales “to be racist and remove black only devices for mobility.” He states that
14 Nurse Suzanne and Sheriff Deputy Larkin conspired “to have classification to
15 remove black inmate from medical floor to cause them undue pain as punishment
16 for being vocal.” He indicates Sheriff McGuinness knowingly allowed this to
17 continue.

18 Plaintiff alleges that his requests for return of his cane have been of no avail.
19 He alleges Dr. Smith and Dr. Mabeus stated they “were not going to have anything
20 to do with [his] cane or pain.” They “stated they did not know what was going on
21 with [his] cane[.]”

22 He further alleges that “Sheriff McGuinness through his Deputy Kendrick
23 denied me access to see a doctor after being brought down by Lt. Blea Officer
24 Kendrick was seen viewing my medical charts and conspiring with 2 nurses to
25 deny [him] [access] to a doctor.” He alleges the Defendants have been deliberately
26 indifferent to his pain, Dr. Tomkins is grossly negligent and has committed

1 malpractice, and that Dr. Detrick through his position at Correctional Health
2 Services has caused cruel and unusual punishment and torture upon him.

3 As remedies, Plaintiff seeks (1) to be examined and given his cane back and
4 (2) compensatory damages of \$500,000 and punitive damages of \$1,000,000.

5 III.

6 The above allegations fail to state a claim against medical Defendants Dr.
7 Dietrich, Dr. Smith, Dr. Mabeus, Kathryn Gonzales, or other Defendants
8 McGuinness, Kendrick, Blea, and Larkin.

9 Drs. Smith and Mabeus were only alleged to have said they were not going
10 to do anything about his cane because “they did not know what was going on.”
11 This is insufficient to state a claim for an Eighth Amendment violation or for
12 malpractice.

13 Dr. Dietrich is apparently named only because he is an official of
14 Correctional Health Services. He is not alleged to have acted or failed to act on
15 personal knowledge regarding Plaintiff. This is insufficient to state a claim against
16 him for deliberate indifference or for malpractice.

17 Gonzales is only mentioned as having somehow conspired with Nurse
18 Suzanne regarding treatment based upon race. There are no specific allegations as
19 to what Gonzales did or did not do. This is insufficient to state a claim for
20 deliberate indifference or for malpractice. “Before it can be said that a prisoner's
21 civil rights have been abridged, “the indifference to his medical needs must be
22 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not
23 support this cause of action.” *Broughton v. Cutter Laboratories*, 622 F.2d 458,
24 460 (9th Cir. 1980) (citing *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976)).

25 McGuinness, Kendrick, Blea, and Larkin are not medical professionals and
26 cannot have responsibility for constitutionally deficient medical care where they
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1 have no duty to provide medical care. On the allegations in the complaint, there is
2 a complete lack of detail as to what each did or did not do to cause medical
3 professionals to be deliberately indifferent. Larkin is alleged only to have removed
4 him from a “medical floor . . . as punishment for being vocal.” Similarly, the
5 allegations that “Sheriff McGuinness through his Deputy Kendrick denied me
6 access to see a doctor after being brought down by Lt. Blea Officer Kendrick
7 was seen viewing my medical charts and conspiring with 2 nurses to deny [him]
8 [access] to a doctor” are vague and insufficient to state claims against Kendrick
9 and Blea. He alleges that McGuinness knowingly allowed this to continue and that
10 McGuinness otherwise denied him access to a doctor “through his deputy
11 Kendrick.” These allegations fail to state a claim against McGuinness. *See*
12 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (rejecting theory that a supervisor’s
13 mere knowledge of his subordinate’s discriminatory purpose amounts to the
14 supervisor’s violating the Constitution).

15 Where a prisoner's Eighth Amendment claim is one of inadequate medical
16 care, the prisoner must allege “acts or omissions sufficiently harmful to evidence
17 deliberate indifference to serious medical needs.” *Estelle*, 429 U.S. at 106. Here,
18 however, even assuming there was a “serious medical need,” the complaint alleges
19 no facts that deprivation of a cane caused any injury to Plaintiff. *See Shapley v.*
20 *Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985) (a prisoner
21 can make “no claim for deliberate medical indifference unless the denial was
22 harmful.”). The Court therefore dismisses the Eighth Amendment claims against
23 these individuals.

24 Further, 42 U.S.C. § 1983 requires a connection or “link” between the
25 alleged actions of named defendants and the deprivation of the protected right. *See*
26 *Monell v. Dep’t of Soc. Svcs.*, 436 U.S. 658 (1978); *Rizzo v. Goode*, 423 U.S. 362
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1 (1976). “A person ‘subjects’ another to the deprivation of a constitutional right,
2 within the meaning of section 1983, if [that person] does an affirmative act,
3 participates in another’s affirmative acts or omits to perform an act which he is
4 legally required to do that causes the deprivation of which complaint is made.”
5 *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). The federal rules of pleading
6 require enough specificity to enable a Defendant to have notice of the claim. *See*
7 Fed. R. Civ. P. 8. Vague allegations of general deprivations, without more, are
8 insufficient. *See, e.g., Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (1982). This
9 appears especially so for allegations against a supervisor (such as Defendant
10 McGuinness) for liability based upon status as a supervisor. *See Iqbal*,
11 129 S. Ct. at 1949.

12 Plaintiff also names “Correctional Health Services” as a Defendant. The
13 complaint alleges that Correctional Health Services is the “contracted care
14 provider.” The Court will assume for present purposes only that Correctional
15 Health Services is functioning as an arm of the government (the State or a
16 municipality) for purposes of a section 1983 civil rights claim. *See, e.g., Sutton v.*
17 *Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835-836 (9th Cir. 1999)
18 (explaining circumstances for private conduct to be “fairly attributable” to
19 government action for purposes of a section 1983 “*Monell* claim” against the
20 government). The complaint names Dr. Detrich, whom the Court will assume is in
21 a position to be a “policymaker” for Correctional Health Services, also for
22 purposes of a *Monell* claim. The complaint, however, fails to identify any
23 unconstitutional “custom or policy” of Correctional Health Services itself (e.g., a
24 policy prohibiting canes) or specific actions taken by Detrich on behalf of
25 Correctional Health Services that could constitute the government policy necessary
26 for *Monell* liability. That is, without specific allegations that Correctional Health
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1 Services itself has an unconstitutional policy or custom, there can be no section
2 1983 claim against that corporate entity. As currently pled, there is no claim stated
3 against Correctional Health Services.

4 Finally, as it is apparent that Plaintiff is no longer incarcerated at the Glenn
5 County Jail, and is not in custody of any of the named Defendants, any claim for
6 injunctive relief is moot. *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir.1991)
7 (holding that a prisoner's civil rights action seeking injunctive relief that was
8 brought under 42 U.S.C. § 1983 was moot because, after having been transferred
9 from state to federal custody, he was no longer subject to the regulations that he
10 sought relief from). When an inmate seeks injunctive or declaratory relief
11 concerning the prison where he is incarcerated, his claims for such relief become
12 moot when he is no longer subjected to those conditions. *See Weinstein v.*
13 *Bradford*, 423 U.S. 147, 148-49 (1975) (finding prisoner's due process claim to be
14 moot once he obtained a full release from prison supervision); *Dilley v. Gunn*, 64
15 F.3d 1365, 1368-69 (9th Cir. 1995) (finding prisoner's suit for injunctive relief
16 moot upon his transfer to another prison); *Chronicle Publ'g Co. v. Rison*, 962 F.2d
17 959, 960 (9th Cir. 1992) (same).

18 Thus, Plaintiff's claims for injunctive relief (e.g, return of his cane) are
19 dismissed as moot. Plaintiff cannot claim any exception to the mootness doctrine,
20 as there is no indication he will be returned to his former place of incarceration and
21 subjected to the same conditions.

22 III

23 For the foregoing reasons, the complaint is DISMISSED. The dismissal,
24 however, is without prejudice to Plaintiff filing an Amended Complaint that
25 attempts to cure deficiencies in the original complaint. The Court will allow
26 Plaintiff 30-days within which to file an Amended Complaint.

1 Plaintiff is notified that an amended complaint supercedes the prior
2 complaint and must be complete in itself without reference to prior or superceded
3 pleadings. "All causes of action alleged in an original [or prior] complaint which
4 are not alleged in an amended complaint are waived." *King v. Atiyeh*, 814 F.2d
5 565, 567 (9th Cir. 1987) (citation omitted).

6 If an Amended Complaint is not filed within 30-days, the action is subject to
7 dismissal with judgment entering in favor of Defendants.

8 IV.

9 Accordingly,

10 (1) Plaintiff's pending application to proceed IFP is DENIED without
11 prejudice. The Clerk shall mail Plaintiff a copy of the court's IFP application
12 form. Plaintiff has 30-days from service of this order within which to file a new
13 IFP application that complies with 28 U.S.C. § 1915. Failure to file a new IFP
14 application may result in dismissal of this action without further notice.

15 (2) The complaint is DISMISSED without prejudice to filing an amended
16 complaint. Plaintiff is granted 30-days leave from service of this order within
17 which to file an amended complaint that corrects deficiencies identified in this
18 order. Failure to file an amended complaint may also result in dismissal of this
19 action without further notice.

20 IT IS SO ORDERED.

21 DATED: July 16, 2009.



Samuel P. King

Samuel P. King
Senior United States District Judge