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

LEROY ARTHUR ANDREOZZI,

No. CIV S-09-1192-JAM-CMK-P

Plaintiff,

vs.

ORDER

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

_____/

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s amended complaint (Doc. 14).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. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief

¹ As noted in a separate order, Plaintiff filed a second, duplicative amended complaint. As the second amended complaint Plaintiff filed (Doc. 15) also violates Rule 8 by attaching almost 100 pages of exhibits in support of his claims, and the body of the complaint is the same as the first amended complaint, the second amended complaint has been disregarded. This action proceeds on the first amended complaint (Doc. 14).

1 from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover,
2 the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain
3 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).
4 This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,
5 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied
6 if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon
7 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must
8 allege with at least some degree of particularity overt acts by specific defendants which support
9 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is
10 impossible for the court to conduct the screening required by law when the allegations are vague
11 and conclusory.

12 Plaintiff’s original complaint was dismissed as violating Rule 8’s pleading
13 requirements. The undersigned identified Plaintiff’s claims as possible, and informed Plaintiff
14 that his complaint was insufficient to state a claim for denial of medical treatment as to any
15 individual with the exception of defendant Lasane. The undersigned explained to Plaintiff what
16 was required in order to state a claim for denial of medical treatment, including the necessity to
17 link each defendant to any alleged constitutional violation. The undersigned also explained to
18 Plaintiff that some of the defendants he named were immune under the Eleventh Amendment.
19 The court provided Plaintiff an opportunity to file an amended complaint to cure the noted
20 defects. Plaintiff has done so, and as addressed by separate order, the undersigned found service
21 to be proper for defendant Lasane.

22 Plaintiff’s amended complaint, however, fails to cure some defects. Specifically,
23 as mentioned by the undersigned in the first screening order, Plaintiff fails to set forth any
24 factually allegations against any defendant other that Lasane. The undersigned previously
25 informed Plaintiff that:

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1 [t]o state a claim under 42 U.S.C. § 1983, the plaintiff must allege
2 an actual connection or link between the actions of the named
3 defendants and the alleged deprivations. See Monell v. Dep't of
4 Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
5 (1976). "A person 'subjects' another to the deprivation of a
6 constitutional right, within the meaning of § 1983, if he does an
7 affirmative act, participates in another's affirmative acts, or omits
8 to perform an act which he is legally required to do that causes the
9 deprivation of which complaint is made." Johnson v. Duffy, 588
10 F.2d 740, 743 (9th Cir. 1978). Vague and conclusory allegations
11 concerning the involvement of official personnel in civil rights
12 violations are not sufficient. See Ivey v. Board of Regents, 673
13 F.2d 266, 268 (9th Cir. 1982). Rather, the plaintiff must set forth
14 specific facts as to each individual defendant's causal role in the
15 alleged constitutional deprivation. See Leer v. Murphy, 844 F.2d
16 628, 634 (9th Cir. 1988).

17 Plaintiff's amended complaint fails to state a claim against any defendant other
18 than Lesane as he fails to make any factual allegations against any other defendant. His amended
19 complaint continues to list several other defendants, including those previously identified as
20 immune under the Eleventh Amendment, but no facts are alleged linking any of the defendants to
21 Plaintiff's alleged constitutional violation. It appears Plaintiff is either unwilling or unable to
22 cure this defect.

23 Because it does not appear possible that Plaintiff can cure the deficiencies
24 identified herein, Plaintiff is not entitled to leave to amend prior to dismissal of the entire action.
25 See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

26 Based on the foregoing, the undersigned recommends that this action proceed
against defendant Lesane only, and all other defendants be dismissed.

These findings and recommendations are submitted to the United States District
Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
after being served with these findings and recommendations, any party may file written

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1 objections with the court. The document should be captioned “Objections to Magistrate Judge's
2 Findings and Recommendations.” Failure to file objections within the specified time may waive
3 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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5 DATED: April 30, 2010

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7 **CRAIG M. KELLISON**
8 UNITED STATES MAGISTRATE JUDGE
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