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

WADE MALLET,

No. CIV S-10-3226-CMK-P

Plaintiff,

vs.

ORDER

MOON JEU, 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 complaint (Doc. 1). Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action.

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 from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “short and plain statement

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

10 I. PLAINTIFF’S ALLEGATIONS

11 Plaintiff alleges in his complaint that his primary care physician, Dr. Moon Jeu, at
12 Folsom State Prison, refused to provide him treatment for his back pain. He states that Dr. Jeu
13 informed him the only other pain medication that could be prescribed was morphine but that he
14 would not prescribe it even though it was prescribed to other inmates. He complained about the
15 lack of pain medication to the warden, chief physicians, and chief executive officer, to no avail.

16 II. DISCUSSION

17 Plaintiff’s complaint appears to state a cognizable claim for relief pursuant to 42
18 U.S.C. § 1983 and 28 U.S.C. § 1915A(b), against plaintiff’s treating physician, Dr. Jeu. Service
19 of the complaint on Dr. Jeu will be authorized by separate order. However, the other named
20 defendants, including Dr. Jasdeep Bal, Dr. P. Sahota, and Mr. A. Deems, all appear to be
21 supervisory personnel to whom plaintiff complained to regarding the lack of treatment Dr. Jeu
22 was providing. None of these other defendants were directly involved in plaintiff’s treatment.

23 Supervisory personnel are generally not liable under § 1983 for the actions of their
24 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no
25 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional
26 violations of subordinates if the supervisor participated in or directed the violations. See id. The

1 Supreme Court has rejected the notion that a supervisory defendant can be liable based on
2 knowledge and acquiescence in a subordinate's unconstitutional conduct because government
3 officials, regardless of their title, can only be held liable under § 1983 for his or her own conduct
4 and not the conduct of others. See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009). When a
5 defendant holds a supervisory position, the causal link between such defendant and the claimed
6 constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862
7 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory
8 allegations concerning the involvement of supervisory personnel in civil rights violations are not
9 sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). “[A] plaintiff must
10 plead that each Government-official defendant, through the official’s own individual actions, has
11 violated the constitution.” Iqbal, 129 S. Ct. at 1948.

12 As Dr. Jeu was the only defendant directly involved in plaintiff’s treatment, he is
13 the only defendant against whom plaintiff has stated a claim. Plaintiff claims the supervisory
14 defendants are liable because they knew of the risk of harm to him. However, there is nothing in
15 the complaint, either explicitly stated or implied, that any of these other defendants were actually
16 involved in the treatment plaintiff received or did not receive. Knowledge of a subordinate’s acts
17 is insufficient.

18 III. CONCLUSION

19 Because it does not appear possible that the deficiencies identified herein can be
20 cured by amending the complaint, plaintiff is not entitled to leave to amend prior to the dismissal
21 of the supervisory defendants, including Dr. Bal, Dr. Sahota, and Mr. Deems. See Lopez v.
22 Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc).

23 Therefore, plaintiff shall show cause in writing, within 30 days of the date of this
24 order, why defendants Bal, Sahota, and Deems, should not be dismissed for failure to state a

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1 claim.¹ Plaintiff is warned that failure to respond to this order may result in dismissal of the
2 action for the reasons outlined above, as well as for failure to prosecute and comply with court
3 rules and orders. See Local Rule 110.

4 IT IS SO ORDERED.

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6 DATED: April 21, 2011

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

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¹ This action will continue against Dr. Jeu.