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

JASON DURAN,

No. 2:14-cv-1080-CMK-P

Plaintiff,

vs.

ORDER

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION,
et al.,

Defendants.

_____/

Plaintiff, a 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. 11). Plaintiff’s original complaint was dismissed, with leave to amend, for failure to state a claim due to vague allegations.

As plaintiff was previously informed, 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

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

11 **I. PLAINTIFF’S ALLEGATIONS**

12 Plaintiff’s amended complaint expounds some upon the allegations set forth in his
13 original complaint. The basic claim remains the same, that his Eighth Amendment rights were
14 violated by the California Department of Corrections and Rehabilitation for failure to provide sex
15 offender treatment while he was incarcerated. In his amended complaint, he alleges he sought
16 treatment from staff at Avenal State Prison, including Dr. Smith, but was denied as no such
17 programs existed. He has named as defendants the California Department of Corrections, the
18 Warden of Avenal State Prison, the Director of the Department of Corrections, and Dr. Smith.

19 **II. DISCUSSION**

20 Again, plaintiff was informed that the treatment a prisoner receives in prison and
21 the conditions under which the prisoner is confined are subject to scrutiny under the Eighth
22 Amendment, which prohibits cruel and unusual punishment. See Helling v. McKinney, 509
23 U.S. 25, 31 (1993); Farmer v. Brennan, 511 U.S. 825, 832 (1994). The Eighth Amendment
24 “embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.”
25 Estelle v. Gamble, 429 U.S. 97, 102 (1976). Conditions of confinement may, however, be harsh
26 and restrictive. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison

1 officials must provide prisoners with “food, clothing, shelter, sanitation, medical care, and
2 personal safety.” Toussaint v. McCarthy, 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official
3 violates the Eighth Amendment only when two requirements are met: (1) objectively, the
4 official’s act or omission must be so serious such that it results in the denial of the minimal
5 civilized measure of life’s necessities; and (2) subjectively, the prison official must have acted
6 unnecessarily and wantonly for the purpose of inflicting harm. See Farmer, 511 U.S. at 834.
7 Thus, to violate the Eighth Amendment, a prison official must have a “sufficiently culpable
8 mind.” See id.

9 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious
10 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at
11 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental
12 health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is
13 sufficiently serious if the failure to treat a prisoner’s condition could result in further significant
14 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d
15 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).
16 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition
17 is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily
18 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See
19 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

20 The requirement of deliberate indifference is less stringent in medical needs cases
21 than in other Eighth Amendment contexts because the responsibility to provide inmates with
22 medical care does not generally conflict with competing penological concerns. See McGuckin,
23 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to
24 decisions concerning medical needs. See Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir.
25 1989). The complete denial of medical attention may constitute deliberate indifference. See
26 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical

1 cannot refer to the prior pleading in order to make plaintiff's amended complaint complete. See
2 Local Rule 220. An amended complaint must be complete in itself without reference to any prior
3 pleading. See id.

4 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
5 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
6 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
7 each named defendant is involved, and must set forth some affirmative link or connection
8 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
9 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

10 Finally, plaintiff is warned that failure to file an amended complaint within the
11 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
12 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
13 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
14 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's amended complaint is dismissed with leave to amend; and
- 17 2. Plaintiff shall file an amended complaint within 30 days of the date of
18 service of this order.

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21 DATED: May 12, 2017

22 
23 **CRAIG M. KELLISON**
24 UNITED STATES MAGISTRATE JUDGE
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