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

KELVIN SIMS,

No. 2:15-CV-0713-CMK-P

Plaintiff,

vs.

ORDER

CDCR, et al.,

Defendants.

_____ /

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. 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. Pending before the court is plaintiff’s first amended complaint (Doc. 13).

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

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

11 I. PLAINTIFF’S ALLEGATIONS

12 Plaintiff names the following as defendants: (1) California Department of
13 Corrections and Rehabilitation (2) John Doe; (3) Smith; (4) Eric Arnold; (5) Dr. Win; (6) Dr.
14 Pfile; (7) J. Lewis; (8) H.K. Johnson; and (9) McComas. Plaintiff alleges that, from October
15 2013 through March 2015, defendant California Department of Corrections and Rehabilitation
16 “demonstrated deliberate indifference via negligent implementation of policies, regulations, etc.”
17 Plaintiff claims that the result was denial of medical care to inmates at Ironwood State Prison and
18 Solano State Prison.

19 Next, plaintiff asserts that defendant John Doe, the warden at Ironwood State
20 Prison, violated his rights by “negligently instituting” policies which resulted in the denial of
21 health care. Plaintiff similarly alleges with respect to defendants Smith, a correctional counselor
22 at Ironwood State Prison, and Eric Arnold, the warden at Solano State Prison.

23 Next, plaintiff claims that defendants Drs. Win and Pfile violated his rights by
24 “following Solano Prison’s protocol” which resulted in the denial of plaintiff’s medical appeal.
25 Plaintiff adds that Dr. Pfile is Dr. Win’s supervisor.

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1 Next, plaintiff claims that defendant J. Lewis violated his rights by “following
2 Solano’s protocol” which resulted in the “erroneous denial” of his medical appeals.

3 Next, plaintiff claims that defendant H.K. Johnson refused to provide “adequate
4 assistance” in processing plaintiff’s emergency request for a prison transfer.

5 Finally, plaintiff claims that defendant McComas misrepresented his statements in
6 a report prepared for plaintiff’s medical appeal. Specifically, plaintiff alleges that defendant
7 McComas omitted plaintiff’s statement: “My medical necessity for an emergency transfer is
8 perpetually being ignored and needs to be addressed.”

9
10 **II. DISCUSSION**

11 The court finds that plaintiff’s amended complaint fails to state a claim as against
12 any named defendant.

13 Defendant California Department of Corrections and Rehabilitation is immune
14 from suit. The Eleventh Amendment prohibits federal courts from hearing suits brought against
15 a state both by its own citizens, as well as by citizens of other states. See Brooks v. Sulphur
16 Springs Valley Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition extends to
17 suits against states themselves, and to suits against state agencies. See Lucas v. Dep’t of Corr.,
18 66 F.3d 245, 248 (9th Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
19 1989). A state’s agency responsible for incarceration and correction of prisoners is a state
20 agency for purposes of the Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782
21 (1978) (per curiam); Hale v. Arizona, 993 F.2d 1387, 1398-99 (9th cir. 1993) (en banc).

22 As to all remaining defendants, plaintiff’s allegations are conclusory legal
23 statements unsupported by any specific factual allegations. In particular, plaintiff’s amended
24 complaint does nothing to inform the court what allegedly happened, when, and by whom.

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1 **III. CONCLUSION**

2 Because it is possible that the deficiencies identified in this order may be cured by
3 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire
4 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is
5 informed that, as a general rule, an amended complaint supersedes the original complaint. See
6 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to
7 amend, all claims alleged in the original complaint which are not alleged in the amended
8 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if
9 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make
10 plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be
11 complete in itself without reference to any prior pleading. See id.

12 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the
13 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See
14 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
15 each named defendant is involved, and must set forth some affirmative link or connection
16 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d
17 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

18 Finally, plaintiff is warned that failure to file an amended complaint within the
19 time provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at
20 1260-61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply
21 with Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b).
22 See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

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Accordingly, IT IS HEREBY ORDERED that:

1. Defendant California Department of Corrections and Rehabilitation is dismissed;
2. Plaintiff's first amended complaint is dismissed with leave to amend; and
3. Plaintiff shall file a second amended complaint within 30 days of the date of service of this order.

DATED: February 10, 2017



CRAIG M. KELLISON
UNITED STATES MAGISTRATE JUDGE