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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CARL ECKSTROM,
Plaintiff,
v.
JEFFREY BEARD, et al.,
Defendants.

No. 2:16-cv-0275 KJM AC P

ORDER and
FINDINGS AND RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner at the California Health Care Facility (CHCF) in Stockton, under the authority of the California Department of Corrections and Rehabilitation (CDCR). Plaintiff proceeds pro se with a civil rights complaint filed pursuant to 42 U.S.C. § 1983, and an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

This action is referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302(c). For the reasons that follow, plaintiff’s request to proceed in forma pauperis is granted, and his complaint is dismissed with leave to file a First Amended Complaint subject to the legal standards set forth herein.

II. In Forma Pauperis Application

Plaintiff has submitted an affidavit and prison trust account statement that make the showing required by 28 U.S.C. § 1915(a). Accordingly, plaintiff’s request to proceed in forma

1 pauperis, ECF No. 8, will be granted.

2 As a result, plaintiff must, over time, pay the statutory filing fee of \$350.00 for this action.
3 See 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial
4 filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the
5 court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust
6 account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated to make
7 monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust
8 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court
9 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. See
10 28 U.S.C. § 1915(b)(2).

11 III. Legal Standards for Screening Prisoner Civil Rights Complaint

12 The court is required to screen complaints brought by prisoners seeking relief against a
13 governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a).
14 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
15 legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or
16 that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. §
17 1915A(b)(1), (2). A claim is legally frivolous when it lacks an arguable basis either in law or in
18 fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-
19 28 (9th Cir. 1984).

20 Rule 8 of the Federal Rules of Civil Procedure "requires only 'a short and plain statement
21 of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair
22 notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v.
23 Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
24 "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it
25 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v.
26 Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly at 555). To survive dismissal for failure to
27 state a claim, "a complaint must contain sufficient factual matter, accepted as true, to "state a
28 claim to relief that is plausible on its face.'" Iqbal at 678 (quoting Twombly at 570). "A claim

1 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
2 reasonable inference that the defendant is liable for the misconduct alleged. The plausibility
3 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility
4 that a defendant has acted unlawfully.” Id. (citing Twombly at 556). “Where a complaint pleads
5 facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between
6 possibility and plausibility of “entitlement to relief.”” Id. (quoting Twombly at 557).

7 A pro se litigant is entitled to notice of the deficiencies in the complaint and an
8 opportunity to amend, unless the complaint’s deficiencies cannot be cured by amendment. See
9 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

10 IV. Screening of Plaintiff’s Complaint

11 A. Plaintiff’s Allegations

12 The complaint challenges the quality of mental health care plaintiff is receiving at CHCF
13 and the refusal of the California Board of Parole Hearings (BPH) to transfer plaintiff to a
14 treatment program within the California Department of Mental Health (DMH). Plaintiff describes
15 a “Catch 22” in which the BPH, in 2006 and 2013, denied plaintiff parole (and, apparently,
16 transfer to DMH), in deference to the assessments of Drs. Sargent, Oyeyemi and Sahni that
17 plaintiff continues to require an intensive and structured therapeutic environment that plaintiff
18 asserts he is not receiving within CDCR. Plaintiff references (but does not attach) inmate appeals
19 which he describes as follows, ECF No. 1 at 13:

20 My request for transfer and appeal were based on the following
21 considerations: I am not getting the level of treatment found
22 necessary by Dr. Sargent and Dr. Oyeyemi. I am not receiving 10
23 hours of therapy as counted by CMC prison. Time spent in
24 “treatment” as counted by CMC in Tier Group was not treatment.
25 The Group watched nature, history or music videos instead of
26 treatment. Petitioner has been victimized by other inmates in CMC
D-Quad. Petitioner is in need of a diagnostic evaluation as to
whether he is schizoid or not for Parole Board and treatment
purposes; CMC has refused to do the evaluation. The Parole Board
is dissatisfied with petitioner’s level of treatment as an EOP and
refuses to parole petitioner on that basis.

27 Plaintiff identifies other alleged inadequacies in the mental health treatment he receives within
28 CDCR, including an allegation that his current therapist is unlicensed. Id. at 18.

1 The complaint alleges that the BPH improperly relied on submitted psychological
2 assessments to conclude that plaintiff’s underlying crimes (including first degree murder) were
3 the product of his mental illness, and thus indicative of his ongoing mental illness, despite the
4 jury rejecting plaintiff’s diminished capacity defense at trial. Plaintiff contends that, as a matter
5 of due process, the BPH should rely on the findings of the jury or reconvene a parole
6 reconsideration hearing that includes the live testimony of witnesses and a six-person jury to
7 reach new and accurate findings concerning plaintiff’s mental condition and entitlement to parole.

8 The complaint identifies two claims for prospective injunctive relief: (1) transfer of
9 plaintiff to DMH; and (2) a new parole hearing. The complaint names two defendants: former
10 CDCR Secretary Jeffrey Beard, and BPH Executive Officer Jennifer Shaffer. Plaintiff seeks only
11 injunctive relief, explaining, ECF No. 1 at 22:

12 The relief Petitioner requests in this complaint is: “Petitioner be
13 paroled and he be sent to a Department of Mental Health Hospital
14 for treatment and/or Petitioner be sent as a prisoner permanently to
15 a Department of Mental Health Hospital until he is paroled.” The
16 above relief was exactly requested in Petitioner’s Reply to Motion
17 to Dismiss the Petition for Writ of Habeas Corpus [and] . . . in
18 Petition for Writ of Habeas Corpus as part of the Statement of
19 Ground One.

20 Plaintiff references a prior habeas petition he filed in the Central District of California,
21 which included the same claims and was dismissed on December 13, 2013. See Eckstrom v.
22 Valenzuela, Case No. SA CV 13-990-TJH (AS), see ECF Nos. 26, 30, 31. The Central District
23 found plaintiff’s first claim – that he was “not receiving proper mental health care and requests a
24 transfer to a state mental hospital” – noncognizable in habeas but stated that it may be cognizable
25 under 42 U.S.C. § 1983. The court also found that plaintiff’s second claim – challenging the
26 BPH’s decision denying plaintiff parole – failed to state a procedural due process claim.

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1 B. Analysis

2 1. Defendants

3 Defendants are sued only their official capacities for prospective injunctive relief.¹ A
4 claim for prospective injunctive relief against a state official in his or her official capacity is not
5 barred by the Eleventh Amendment provided the official has authority to implement the requested
6 relief. Will v. Michigan Dept. of State Police, 491 U.S. 58, 92 (1989). “A plaintiff seeking
7 injunctive relief against the State is not required to allege a named official’s personal involvement
8 in the acts or omissions constituting the alleged constitutional violation.” Hartmann v. California
9 Dep’t of Corr. & Rehab., 707 F.3d 1114, 1127 (9th Cir. 2013) (citing Hafer v. Melo, 502 U.S. 21,
10 25 (1991), and Kentucky v. Graham, 473 U.S. 159, 166 (1985)).

11 2. Claim One

12 Plaintiff emphasizes that the relief he is requesting pursuant to Claim One “is the same as
13 that required in Federal petition for Writ of Habeas Corpus SA-CV-13-0990 TJH-(AS) Central
14 District,” ECF No. 1 at 21, which is plaintiff’s transfer to DMH for mental health treatment,
15 either as a condition of his parole or until the date when he is paroled.

16 This relief is unavailable. Prisoners have no constitutional right to placement in a
17 particular facility. See Meachum v. Fano, 427 U.S. 215, 224-5 (1976) (prisoners have no due
18 process right to placement in a particular correctional facility or to prevent transfer from one
19 correctional facility to another); accord, Olim v. Wakinekona, 461 U.S. 238, 245 (1983). Thus, a
20 prisoner cannot be transferred from CDCR to DMH upon request; moreover, such transfers
21 implicate independent due process protections. See Vitek v. Jones, 445 U.S. 480, 494-95 (1980);
22 see also Williams v. Ige, 2017 WL 3045885, at *2, 2017 U.S. Dist. LEXIS 109583 (D. Haw. July
23 14, 2017) (state prisoner “has no right to a transfer to the Hawaii State Hospital”), appeal

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25 ¹ Both defendants, named in their official capacities as state agency heads, are immune from
26 damages suits under 42 U.S.C. § 1983. See Atascadero State Hospital v. Scanlon, 473 U.S. 234,
27 237-38 (1985) (Eleventh Amendment bars suits against states in federal court); Wolfe v.
28 Strankman, 392 F.3d 358, 364 (9th Cir. 2004) (as applied to state agencies). See also Sellars v.
Procurier, 641 F.2d 1295, 1302-03 (9th Cir.), cert. denied, 454 U.S. 1102 (1981) (BPH
members, exercising their quasi-judicial responsibilities in rendering a decision to grant, deny or
revoke parole, are absolutely immune from damages liability).

1 dismissed, 2017 WL 7036682, 2017 U.S. App. LEXIS 26490 (9th Cir. Dec. 21, 2017).

2 Because plaintiff cannot obtain the injunctive relief he requests, his claim for a transfer
3 from CDCR to DMH must be dismissed. As a result, plaintiff is unable to state a cognizable
4 claim for prospective injunctive relief against the CDCR Secretary,² who should also be
5 dismissed from this action.

6 Nevertheless, plaintiff's allegations that he is receiving inadequate mental health treatment
7 within CDCR may be framed as a cognizable Eighth Amendment claim for deliberate
8 indifference to plaintiff's serious mental health needs. However, to properly state a cognizable
9 claim, plaintiff must identify specific providers whose direct personal care of plaintiff has
10 allegedly been constitutionally inadequate. The legal standards for stating a claim for deliberate
11 indifference to serious medical needs, including serious mental health needs, are as follows:

12 "In the Ninth Circuit, the test for deliberate indifference consists of
13 two parts. First, the plaintiff must show a serious medical need by
14 demonstrating that failure to treat a prisoner's condition could result
15 in further significant injury or the unnecessary and wanton
16 infliction of pain. Second, the plaintiff must show the defendant's
17 response to the need was deliberately indifferent. This second
18 prong ... is satisfied by showing (a) a purposeful act or failure to
19 respond to a prisoner's pain or possible medical need and (b) harm
20 caused by the indifference." Jett v. Penner, 439 F.3d 1091, 1096
21 (9th Cir. 2006) (internal citations, punctuation and quotation marks
22 omitted); accord, Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th
23 Cir. 2012); Lemire v. CDCR, 726 F.3d 1062, 1081 (9th Cir. 2013).

19 To state a claim for deliberate indifference to serious medical
20 needs, a prisoner must allege that a prison official "kn[ew] of and
21 disregard[ed] an excessive risk to inmate health or safety; the
22 official must both be aware of the facts from which the inference
23 could be drawn that a substantial risk of serious harm exists, and he
24 must also draw the inference." Farmer v. Brennan, 511 U.S. 825,
25 837 (1994).

23 The subjective nature of this inquiry requires that a claim for deliberate indifference be
24 directed to the challenged conduct of a specific defendant or defendants. The instant complaint

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27 ² Had the complaint stated a cognizable claim for prospective injunctive relief, the court would
28 be required to substitute current CDCR Secretary Kernan for former CDCR Secretary Beard.
See Fed. R. Civ. P. 25(d) (automatic substitution of successor to public official sued in his or her
official capacity).

1 makes no allegations of deliberate indifference against any defendant.³ Therefore, plaintiff will
2 be granted leave to file a First Amended Complaint that attempts to state a cognizable claim
3 against a proper defendant or defendants for deliberate indifference to his serious mental health
4 needs.

5 3. Claim Two

6 In support of his Claim Two against the BPH and defendant Shaffer, plaintiff explains, id.
7 at 24:

8 I [was] explicitly denied in my then [former habeas corpus] Petition
9 to urge a procedural due process claim. I now urge a procedural
10 due process claim. This Claim will not give me a parole date but
11 only proper procedural due process at Parole Board Hearings. The
Claim can therefore be raised in a 42 USC 1983 Federal Civil
Rights Lawsuit.

12 Plaintiff contends, as a matter of due process, that the BPH should rely on the findings of the jury
13 at his trial (rejecting plaintiff's diminished capacity defense and convicting him of first degree
14 murder) and/or convene a new parole hearing that includes witness testimony and findings by a
15 six-person jury.

16 Dissatisfaction with a decision of the BPH does not support a cognizable due process
17 challenge. As plaintiff was informed by the Central District, the federal due process protections
18 accorded to state prisoners at parole hearings are very limited. As a threshold matter, "the States
19 are under no duty to offer parole to their prisoners." Swarthout v. Cooke, 562 U.S. 216, 220
20 (2011) (citing Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S. 1, 7 (1979)). If
21 parole is offered, due process is satisfied when prisoners are "allowed to speak at their parole
22 hearings and to contest the evidence against them," "afforded access to their records in advance,"
23 and "notified as to the reasons why parole was denied." Swarthout, 562 U.S. at 220. Plaintiff

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25 ³ The instant complaint makes no allegations that former CDCR Secretary Beard was personally
26 involved in plaintiff's mental health treatment at CDCR, or participated in or directed any
27 decision denying plaintiff's request for transfer to DMH. A supervisor, such as the CDCR
28 Secretary, cannot be liable under a theory of respondeat superior merely due to his supervisory
position. Supervisors may be held liable only if they "participated in or directed the violations, or
knew of the violations and failed to act to prevent them." Taylor v. List, 880 F.2d 1040, 1045
(9th Cir. 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

1 does not assert that he was denied these rights, only that he disagrees with the BPH decisions.
2 Under Swarthout, the substance of the BPH decision is not subject to federal review: “[I]t is no
3 federal concern . . . whether California’s ‘some evidence’ rule of judicial review (a procedure
4 beyond what the Constitution demands) was correctly applied.” Id. at 221. Plaintiff’s request for
5 the implementation of novel procedures at a new parole hearing are similarly noncognizable.
6 “[T]he responsibility for assuring that the constitutionally adequate procedures governing
7 California’s parole system are properly applied rests with California courts, and is no part of the
8 Ninth Circuit’s business.” Swarthout, 562 U.S. at 222.

9 For these reasons, plaintiff’s due process claims premised on his request for a new parole
10 hearing must be dismissed. As a result, plaintiff is unable to state a cognizable claim against BPH
11 Executive Officer Jennifer Shaffer, who should also be dismissed from this action.

12 V. Leave to File a First Amended Complaint

13 Plaintiff will be granted leave to file a First Amended Complaint limited to a claim of
14 deliberate indifference to his serious mental health needs. To accomplish this, plaintiff must
15 allege facts that support the elements of a deliberate indifference claim, as set forth above, and
16 “link” or “connect” his allegations of misconduct to a specific defendant or defendants directly
17 responsible for providing plaintiff with mental health treatment. “A person ‘subjects’ another to
18 the deprivation of a constitutional right, within the meaning of section 1983, if he does an
19 affirmative act, participates in another’s affirmative acts or omits to perform an act which he is
20 legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy,
21 588 F.2d 740, 743 (9th Cir. 1978); see also Leer v. Murphy, 844 F.2d 628, 633 (9th Cir.1988)
22 (“The inquiry into causation must be individualized and focus on the duties and responsibilities of
23 each individual defendant whose acts or omissions are alleged to have caused a constitutional
24 deprivation.”) (citations omitted.) A complaint that fails to identify the specific acts of a
25 defendant that allegedly violated plaintiff’s rights fails to meet the notice requirements of Rule
26 8(a). Hutchinson v. United States, 677 F.2d 1322, 1328 n.5 (9th Cir. 1982).

27 To be cognizable, plaintiff’s deliberate indifference claims must also be administratively
28 exhausted through his inmate appeals process. “The Prison Litigation Reform Act of 1995

1 (PLRA) mandates that an inmate exhaust ‘such administrative remedies as are available’ before
2 bringing suit to challenge prison conditions.” Ross v. Blake, 136 S. Ct. 1850, 1854-55 (June 6,
3 2016) (quoting 42 U.S.C. § 1997e(a)). Plaintiff is informed that new claims based on actions that
4 took place *after* the original complaint was properly filed are not barred under McKinney so long
5 as the plaintiff exhausted the new claims *prior to filing the amended complaint*. See Rhodes v.
6 Robinson, 621 F.3d 1002, 1005 (9th Cir. 2010); see also Akhtar v. J. Mesa, 698 F.3d 1202, 1210
7 (9th Cir. 2012). Moreover, new claims based on actions that took place *before* the original
8 complaint was properly filed are not barred under McKinney so long as the plaintiff exhausted the
9 new claims *prior to filing the amended complaint*. See Cano v. Taylor, 739 F.3d 1214, 1220 (9th
10 Cir. 2014).

11 Subject to the legal standards set forth above, plaintiff may file a proposed First Amended
12 Complaint (FAC) within thirty days after service of this order. The FAC must be on the form
13 provided, labeled “First Amended Complaint,” and provide the case number assigned this case.
14 The FAC must be complete in itself without reference to any prior pleading. See Local Rule 15-
15 220; Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended complaint,
16 the prior pleading is superseded. The FAC will be screened by the court pursuant to 28 U.S.C. §
17 1915A. Failure to timely file a FAC will result in the dismissal of this action without prejudice.

18 VI. Summary

19 You are granted in forma pauperis status to proceed in this action; you will pay the filing
20 fee over time with deductions from your prison trust account.

21 The court has screened your complaint, and finds that your claims for injunctive relief
22 against the directors of the California Department of Corrections and Rehabilitation and Board of
23 Parole Hearings cannot support relief because you do not have a constitutional right to DHS
24 placement or parole. Therefore, the magistrate judge recommends to the district judge that these
25 claims and defendants be dismissed.

26 The court is also dismissing your miscellaneous motions – motion for the court to accept a
27 reduced number of copies, ECF No. 10; motion to screen the complaint, ECF No. 13; and motion
28 for extended time to pursue an appeal, ECF No. 15 – as moot.

1 However, because your allegations focus on the alleged inadequacies of the mental health
2 treatment you are receiving, you are granted leave to file a First Amended Complaint to attempt
3 to state a cognizable claim for deliberate indifference to your serious mental health needs. The
4 court has provided you guidance in how to frame a deliberate indifference claim against a specific
5 defendant or defendants.

6 VII. Conclusion

7 For the foregoing reasons, IT IS HEREBY ORDERED that:

8 1. Plaintiff's request to proceed in forma pauperis, ECF No. 8, is granted.

9 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
10 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
11 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
12 Director of the California Department of Corrections and Rehabilitation filed concurrently
13 herewith.

14 3. Plaintiff's complaint, ECF No. 1, is dismissed with leave to file a proposed First
15 Amended Complaint within thirty (30) days after service of this order, subject to the legal
16 standards set forth herein. Failure to timely file a FAC will result in a recommendation that this
17 action be dismissed without prejudice.

18 4. Plaintiff's miscellaneous motions, ECF Nos. 10, 13, 15, are denied as moot.

19 5. The Clerk of Court is directed to send plaintiff, together with a copy of this order, a
20 copy of the form complaint used by prisoners in this district to pursue a civil rights action under
21 42 U.S.C. § 1983.

22 Additionally, for the reasons set forth above, IT IS HEREBY RECOMMENDED that:


23 1. Plaintiff's claims for prospective injunctive relief – for a new hearing before the Board
24 of Parole Hearings and transfer to the California Department of Mental Health – be dismissed;
25 and

26 2. Defendants Beard and Shaffer also be dismissed from this action.

27 These findings and recommendations are submitted to the United States District Judge
28 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, plaintiff may file written objections
2 with the court. Such document should be captioned "Objections to Magistrate Judge's Findings
3 and Recommendations." Plaintiff is advised that failure to file objections within the specified
4 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153
5 (9th Cir. 1991).

6 DATED: May 2, 2018

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9 ALLISON CLAIRE
10 UNITED STATES MAGISTRATE JUDGE
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