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

TOM SMITH,

Plaintiff,

v.

CALIFORNIA CORRECTIONAL
HEALTH CARE SERVICES, et al.,

Defendants.

No. 2:16-CV-1038-TLN-DMC-P

ORDER

Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the Court is Plaintiff’s first amended complaint (ECF No. 18). Plaintiff alleges Defendants violated his Eighth, Fourteenth, and Fifth Amendment rights because they knowingly caused Plaintiff to relapse by deliberately changing his medication. Plaintiff also alleges that his general right to refuse medication was violated when he was disciplined for not wanting to take his medication. Plaintiff further alleges violations of his Fourteenth Amendment rights generally, his Fifth Amendment right against double jeopardy, and his right against “mental discrimination” related to some underlying state court trial action. For the reasons set forth below, Plaintiff’s first amended complaint is dismissed with leave to amend.

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1 **I. SCREENING REQUIREMENT AND STANDARD**

2 The Court is required to screen complaints brought by prisoners seeking relief
3 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or
5 malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief
6 from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2).

7 The Federal Rules of Civil Procedure require complaints contain a "...short and
8 plain statement of the claim showing that the pleader is entitled to relief." See McHenry v.
9 Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (quoting Fed. R. Civ. P. 8(a)(1)). Detailed factual
10 allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action,
11 supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 556 U.S. 662, 678
12 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). While a plaintiff's
13 allegations are taken as true, courts "are not required to indulge unwarranted inferences." Doe I v.
14 Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
15 omitted).

16 Prisoners proceeding pro se in civil rights actions are entitled to have their
17 pleadings liberally construed and are afforded the benefit of any doubt. Hebbe v. Pliler, 627 F.3d
18 338, 342 (9th Cir. 2010) (citations omitted). To survive screening, Plaintiff's claims must be
19 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer
20 that each named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at 678 (quotation
21 marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The
22 sheer possibility that a defendant acted unlawfully is not sufficient, and mere consistency with
23 liability falls short of satisfying the plausibility standard. Iqbal, 556 U.S. at 678 (quotation marks
24 omitted); Moss, 572F.3d at 969.

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II. PLAINTIFF’S ALLEGATIONS

While plaintiff’s complaint is extremely difficult to read, and the claims are difficult to decipher, it appears to the Court that plaintiff’s amended pleading raises three claims: (1) Plaintiff alleges that his Eighth, Fourteenth, and Fifth Amendment rights were violated when an unspecified Defendant changed his medication. Plaintiff alleges the medication was court mandated, and the change in medication resulted in Plaintiff suffering a seizure and other negative physical manifestations. (2) Plaintiff alleges his “right to refuse drugs [he] was allergic to” was violated when he was restrained and forced to take his medication. Plaintiff’s constitutional basis for this claim is not stated. In this allegation plaintiff contends that he was beaten, starved, stripped, and placed in cold housing after refusing to take his medication. Plaintiff again fails to attribute this alleged violation to any of the named Defendants. (3) Plaintiff alleges his Fourteenth Amendment rights generally, his Fifth Amendment right against double jeopardy, and his “right against mental discrimination” were each violated. This claim seems to be related to an underlying state court action. It is unclear how the alleged constitutional rights were violated in this claim or and whether there exists a basis for relief under section 1983.

III. ANALYSIS

A. Sufficiency of Plaintiff’s Allegations

The Federal Rules of Civil Procedure require complaints contain a “...short and plain statement of the claim showing that the pleader is entitled to relief.” See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (quoting Fed. R. Civ. P. 8(a)(1)). Claims must be stated simply, concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice of the plaintiff’s claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because a plaintiff must allege, with at least some degree of particularity, overt acts by specific defendants which support the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, to survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow the Court to

1 reasonably infer that each named defendant is liable for the misconduct alleged, Iqbal, 556 U.S. at
2 678 (quotation marks omitted); Moss v. United States Secret Service, 572 F.3d 962, 969 (9th Cir.
3 2009).

4 Here, all three of Plaintiff's claims fail to meet the pleading standard. As a general
5 matter Plaintiff fails to attribute any of the alleged violations to any of the Defendants. In other
6 words, Plaintiff fails to identify which Defendant(s) caused the alleged constitutional violations.
7 Plaintiff must identify the acts of specific defendants and connect those acts with the alleged
8 violation. See Kimes v. Stone, 84 F.3d at 1129. Plaintiff's failure to allege with any degree of
9 particularity which overt acts by which defendant caused the constitutional violation renders
10 Plaintiff's complaint inadequate. This alone is enough to prevent Plaintiff's complaint from
11 passing the screening stage. However, Plaintiff's claims suffer from additional deficiencies that
12 must be cured as well for the complaint to proceed.

13 Plaintiff's first claim seems to relate exclusively to an Eight Amendment right to
14 medical treatment. There are no facts that support a Fourteenth Amendment violation, a Fifth
15 Amendment double jeopardy violation, or a Fifth Amendment self-incrimination violation.
16 Plaintiff is referred to this Court's Findings and Recommendations filed on February 10, 2017,
17 stating the standard for such an Eighth Amendment claim. As to the remaining alleged violations
18 in this claim, Plaintiff is informed that he must identify the *specific* constitutional right that was
19 violated and allege sufficient facts to support that alleged constitutional violation.

20 Plaintiff's second claim seems to allege a violation of his Eighth Amendment
21 right, however Plaintiff never identifies it as an Eighth Amendment claim nor does Plaintiff
22 identify any other constitutional basis for this claim. Plaintiff is again reminded that he must
23 specify which constitutional right was violated and allege sufficient facts to support that alleged
24 constitutional violation.

25 Plaintiff's third claim is the most unclear. Plaintiff has identified the claim as a
26 violation of his "Fourteenth U.S. Constitutional right against double jeopardy through false
27 imprisonment and mental illness discrimination". As a threshold matter, the Fifth Amendment,
28 not the Fourteenth Amendment, protects against double jeopardy. Further, if Plaintiff is alleging

1 a Fourteenth Amendment violation, it is unclear how it occurred based on the facts alleged. In
2 this claim Plaintiff makes reference to underlying state court trial proceedings and possibly to
3 federal court proceedings though the specifics of the proceedings are unclear. If this claim is
4 related to Plaintiff's underlying conviction and sentence, Plaintiff is informed that such a
5 challenge is not cognizable under 42 U.S.C. § 1983 and that Petitioner's sole federal remedy is a
6 petition for a writ of habeas corpus. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); see also
7 Neal v. Shimoda, 131 F.3d 818, 824 (9th Cir. 1997); Trimble v. City of Santa Rosa, 49 F.3d 583,
8 586 (9th Cir. 1995) (per curiam). If the claim is in fact an action seeking monetary damages or
9 declaratory relief related to alleged constitutional violations, Plaintiff is reminded that he must
10 specify which constitutional right was violated and plead sufficient facts to support the alleged
11 violation.

12 **B. Immune Defendants**

13 In this case, plaintiff names one individual as a defendant – Alicia Bulin, who is
14 alleged to be a prison doctor. Plaintiff also names “California Correctional health Care Services,”
15 “California Department of Corrections,” and “Salinas Valley State Prison Department of Mental
16 Health.” The state entity defendants are immune from the federal claims attempted by plaintiff.
17 The Eleventh Amendment prohibits federal courts from hearing suits brought against a state both
18 by its own citizens, as well as by citizens of other states. See Brooks v. Sulphur Springs Valley
19 Elec. Coop., 951 F.2d 1050, 1053 (9th Cir. 1991). This prohibition extends to suits against states
20 themselves, and to suits against state agencies. See Lucas v. Dep't of Corr., 66 F.3d 245, 248 (9th
21 Cir. 1995) (per curiam); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A state's agency
22 responsible for incarceration and correction of prisoners is a state agency for purposes of the
23 Eleventh Amendment. See Alabama v. Pugh, 438 U.S. 781, 782 (1978) (per curiam); Hale v.
24 Arizona, 993 F.2d 1387, 1398-99 (9th Cir. 1993) (en banc).

25 Should plaintiff elect to further amend his pleading, any such complaint may not proceed
26 against defendants who are immune.

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1 **IV. AMENDING THE COMPLAINT**

2 Because it may be possible that some of the deficiencies identified in this order
3 can be cured by amending the complaint, plaintiff will be given leave to amend. See Lopez v.
4 Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a
5 general rule, an amended complaint supersedes the original complaint. See Ferdik v. Bonzelet,
6 963 F.2d 1258, 1262 (9th Cir. 1992). Therefore, if plaintiff amends the complaint, the court
7 cannot refer to the prior pleading in order to make plaintiff's amended complaint complete. See
8 Local Rule 220. An amended complaint must be complete in itself without reference to any prior
9 pleading. See id. This means, in practical terms, that to achieve the relief sought here, plaintiff
10 must not only cure the deficiencies identified in this order, but also reallege the cognizable
11 claim(s) discussed in this Court's order.

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 further warned that a complaint which again fails
21 to comply with Rule 8 will, in the court's discretion, be dismissed with prejudice pursuant to Rule
22 41(b). See Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981).

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V. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's first amended complaint is dismissed with leave to amend; and
2. Plaintiff shall file a second amended complaint within 30 days of the date

of service of this order

Dated: March 13, 2019



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE