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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GARLAND A. JONES,  
Plaintiff,  
v.  
CALIFORNIA CORRECTIONAL  
HEALTH CARE SERVICES, et al.,  
Defendants.

No. 2:17-cv-0738 WBS DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Before the court is plaintiff’s motion to proceed in forma pauperis and plaintiff’s complaint for screening. For the reasons set forth below, the court will grant plaintiff’s motion to proceed in forma pauperis, dismiss plaintiff’s complaint, and give plaintiff an opportunity to file an amended complaint.

**IN FORMA PAUPERIS**

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct

1 the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and  
2 forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments  
3 of twenty percent of the preceding month's income credited to plaintiff's prison trust account.  
4 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
5 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. §  
6 1915(b)(2).

## 7 **SCREENING**

### 8 **I. Legal Standards**

9 The court is required to screen complaints brought by prisoners seeking relief against a  
10 governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. §  
11 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims  
12 that are legally "frivolous or malicious," that fail to state a claim upon which relief may be  
13 granted, or that seek monetary relief from a defendant who is immune from such relief. See 28  
14 U.S.C. § 1915A(b)(1) & (2).

15 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
16 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
17 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
18 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
19 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
20 pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227.

21 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain  
22 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the  
23 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic  
24 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
25 However, in order to survive dismissal for failure to state a claim a complaint must contain more  
26 than "a formulaic recitation of the elements of a cause of action;" it must contain factual  
27 allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550  
28 U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the

1 allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S.  
2 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all  
3 doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

4 The Civil Rights Act under which this action was filed provides as follows:

5 Every person who, under color of [state law] . . . subjects, or causes  
6 to be subjected, any citizen of the United States . . . to the  
7 deprivation of any rights, privileges, or immunities secured by the  
8 Constitution . . . shall be liable to the party injured in an action at  
9 law, suit in equity, or other proper proceeding for redress.

10 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the  
11 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See  
12 Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
13 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the  
14 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or  
15 omits to perform an act which he is legally required to do that causes the deprivation of which  
16 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

17 Moreover, supervisory personnel are generally not liable under § 1983 for the actions of  
18 their employees under a theory of respondeat superior and, therefore, when a named defendant  
19 holds a supervisory position, the causal link between him and the claimed constitutional  
20 violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979);  
21 Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations  
22 concerning the involvement of official personnel in civil rights violations are not sufficient. See  
23 Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

## 24 **II. Analysis**

25 Plaintiff, formerly an inmate at Valley State Prison and now an inmate at the Donovan  
26 Correctional Facility in San Diego, alleges a medication he was taking caused him to have a  
27 breast-like growth on his chest. He states that he suffers psychologically because the growth is  
28 "not my gender." He is also harassed by other inmates and has been subjected to unwanted  
touching. He filed health care appeals with the prison but was denied the surgery on the basis that

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1 is was not medically necessary. Plaintiff seeks an injunction ordering the prison to provide him  
2 the chest reduction surgery.

3 Plaintiff identifies only California Correctional Health Care Services (“CCHCS”) and its  
4 Inmate Correspondence and Appeals Branch as defendants. However, suits against those entities  
5 are barred by the Eleventh Amendment. See, e.g., Pennhurst State Sch. & Hospital v. Halderman,  
6 465 U.S. 89, 100 (1984) (suits against the state or its agencies are absolutely barred, regardless of  
7 the form of relief sought). Therefore, plaintiff cannot state a claim against CCHCS or its  
8 appellate branch. Plaintiff can, however, seek injunctive relief against state officials. Plaintiff  
9 will be given an opportunity to amend his complaint to identify the appropriate defendant or  
10 defendants.

11 If plaintiff can identify the correct defendants, he may be able to state a potentially cognizable  
12 claim that officials were deliberately indifferent to his serious medical needs in violation of  
13 plaintiff’s Eighth Amendment rights. Plaintiff is advised that in order to state a claim in an  
14 amended complaint, he must identify as a defendant only persons who personally participated in a  
15 substantial way in depriving plaintiff of a federal constitutional right. Johnson v. Duffy, 588 F.2d  
16 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional right if  
17 he does an act, participates in another’s act or omits to perform an act he is legally required to do  
18 that causes the alleged deprivation).

19 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed. R.  
20 Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed. R.  
21 Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or  
22 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

23 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
24 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any  
25 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.  
26 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be  
27 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema

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1 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,  
2 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8.

3 An amended complaint must be complete in itself without reference to any prior pleading.  
4 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.

5 Finally, any amended complaint must show the federal court has jurisdiction and the action is  
6 brought in the right place. Because plaintiff is seeking injunctive relief, he must name as  
7 defendants those officials who are capable of providing the relief he seeks. Because plaintiff is  
8 no longer incarcerated at Valley State Prison, he may not seek injunctive relief from officials  
9 there.

10 For the foregoing reasons, IT IS HEREBY ORDERED as follows:

- 11 1. Plaintiff’s motion to proceed in forma pauperis (ECF Nos. 2, 5) is granted.
- 12 2. Defendants CCHCS and its Inmate Correspondence and Appeals Branch are dismissed  
13 from this action with prejudice.
- 14 3. Plaintiff is granted thirty days from the date of service of this order to file an amended  
15 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules  
16 of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear  
17 the docket number assigned this case and must be labeled “First Amended Complaint.”  
18 Plaintiff must file an original and two copies of the amended complaint. Plaintiff’s  
19 failure to file an amended complaint within the time provided, or otherwise respond to  
20 this order, may result in dismissal of this case.
- 21 4. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint form  
22 used in this district.

23 Dated: October 25, 2017

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27 DEBORAH BARNES  
28 UNITED STATES MAGISTRATE JUDGE

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