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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM B. ANDERSON,  
Plaintiff,  
v.  
S. ROSENLOF, et al.,  
Defendants.

No. 2:23-cv-2375 DB P

ORDER

Plaintiff, a state prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. §1983. He alleges defendants retaliated against him for exercising his First Amendment rights and were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment. Before the court is plaintiff's first amended complaint for screening. For the reasons set forth below, the court finds plaintiff has stated potentially cognizable claims against defendant Mendez but fails to state any other claims. Plaintiff will be given the choice of proceeding immediately on his claims against Mendez or filing a second amended complaint.

**SCREENING**

As described in this court's prior screening order, the court is required to screen complaints brought by prisoners to determine whether they sufficiently state claims under 42 U.S.C. § 1983. 28 U.S.C. § 1915A(a). The prisoner must plead an arguable legal and factual basis for each claim in order to survive dismissal. Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). In

1 addition, the prisoner must demonstrate a link between the actions of each defendant and the  
2 deprivation of his rights. Monell v. Dept. of Social Servs., 436 U.S. 658 (1978). “A person  
3 ‘subjects’ another to the deprivation of a constitutional right, within the meaning of § 1983, if he  
4 does an affirmative act, participates in another’s affirmative acts or omits to perform an act which  
5 he is legally required to do that causes the deprivation of which complaint is made.” Johnson v.  
6 Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

7 **I. First Amended Complaint**

8 In his first amended complaint, plaintiff again identifies the following defendants: (1) Dr. S.  
9 Rosenlof, Senior Psychologist Supervisor; (2) psychologist Dr. Jorge Mendez; and (3)  
10 psychiatrist Dr. Milan Pham. (ECF No. 10.)

11 Plaintiff alleges the following. He has been diagnosed with paranoid schizophrenia. In  
12 July 2023, he was a participant in the prison’s Mental Health Delivery System at the  
13 Enhanced Outpatient Program (“EOP”) level of care. He was housed in a specialized psychiatric  
14 housing unit. On July 26, plaintiff was released from administrative segregation. At that time, he  
15 was experiencing symptoms of his mental illness - anxiety, paranoia, auditory hallucinations.  
16 (ECF No. 10 at 5.)

17 On August 4, plaintiff had an appointment with defendant Mendez. When plaintiff entered  
18 the office, Mendez told him that if he started “verbalizing your complaints towards officers and  
19 become agitated, I will press my al[a]rm, so they can come deal with you!” Plaintiff felt this  
20 statement was threatening and left the office. As he did so, he told Mendez that he would be  
21 filing a grievance regarding the threat. Plaintiff subsequently filed a grievance against Mendez.  
22 (ECF No. 10 at 5-6.)

23 After the appointment, Mendez prepared a false report regarding plaintiff and requested an  
24 emergency meeting of the Interdisciplinary Treatment Team (“IDTT”) for the purpose of having  
25 plaintiff discharged from the EOP program. Plaintiff alleges the false statements included (1)  
26 plaintiff did not “present with functional impairments;” (2) plaintiff had “poor boundaries when  
27 engaged in RT groups;” and (3) plaintiff was not “currently on psychotropic medications.”

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1 Shortly thereafter, the three defendants met and discharged plaintiff from the EOP program.  
2 (ECF No. 10 at 6-9.)

3 Plaintiff alleges defendants Rosenlof and Pham relied on the false report and were  
4 deliberately indifferent to plaintiff's serious mental health needs. In addition, plaintiff contends  
5 Rosenlof and Pham made the decision to discharge plaintiff from the EOP program to punish  
6 plaintiff for filing the grievance and to dissuade him from filing further grievances.

7 Plaintiff contends he has suffered anxiety, paranoia, insomnia, depression, auditory  
8 hallucinations, hopelessness, and desolation due to being discharged from the EOP program.

## 9 **II. Does Plaintiff State Cognizable Claims for Retaliation?**

10 "Within the prison context, a viable claim of First Amendment retaliation entails five basic  
11 elements: (1) An assertion that a state actor took some adverse action against an inmate (2)  
12 because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's  
13 exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate  
14 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005) (footnote and  
15 citations omitted).

16 Plaintiff has alleged a potentially cognizable retaliation claim against defendant Mendez.  
17 However, plaintiff fails to allege retaliation claims against Rosenlof and Pham. Plaintiff simply  
18 states that Rosenlof and Pham decided to discharge him from the EOP program in retaliation for  
19 plaintiff's grievance against Mendez. However, plaintiff alleges no facts showing that Rosenlof  
20 and Pham were aware of plaintiff's grievance. Plaintiff's conclusory statements are insufficient  
21 to state a potentially cognizable retaliation claim against Rosenlof and Pham.

## 22 **III. Does Plaintiff State Cognizable Claims for Deliberate Indifference?**

23 To allege an Eight Amendment medical claim, plaintiff must show that he has a serious  
24 medical need and that each defendant responded to that need with deliberate indifference. Farmer  
25 v. Brennan, 511 U.S. 825, 834 (1994). This court finds plaintiff has adequately alleged a serious  
26 medical need. Plaintiff alleges Mendez knew the statements he made in the report were false and  
27 it may be inferred that Mendez made them with deliberate indifference to plaintiff's serious

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1 medical needs. Plaintiff has stated a minimally sufficient Eighth Amendment claim against  
2 Mendez.

3 Again, however, plaintiff fails to allege sufficient facts to state a claim that Rosenlof and  
4 Pham violated his Eighth Amendment rights. He alleges no facts to support his contention that  
5 Rosenlof and Pham knew Mendez's statements in the report were false. Nor does plaintiff allege  
6 facts showing that the false statements were the basis for those defendants' decision to remove  
7 him from the EOP program.

### 8 PROCEEDING OR AMENDING THE COMPLAINT

9 As set forth above, in the first amended complaint plaintiff alleges potentially cognizable  
10 claims against defendant Mendez for retaliation and deliberate indifference to his medical needs.  
11 Plaintiff fails to allege potentially cognizable claims against the remaining defendants. Plaintiff  
12 has a choice. He may proceed immediately on the claims found potentially cognizable herein or  
13 he may file a second amended complaint. Plaintiff is advised that if he chooses to proceed on the  
14 claims against Mendez, he will be voluntarily dismissing his other claims and defendants.

15 If plaintiff chooses to file a second amended complaint, he must clearly identify each  
16 defendant and the action that defendant took that violated his constitutional rights. The court is  
17 not required to review exhibits to determine what plaintiff's charging allegations are as to each  
18 named defendant. The charging allegations must be set forth in the amended complaint, so  
19 defendants have fair notice of the claims plaintiff is presenting. That said, plaintiff need not  
20 provide every detailed fact in support of his claims. Rather, plaintiff should provide a short, plain  
21 statement of each claim. See Fed. R. Civ. P. 8(a).

22 Any amended complaint must show the federal court has jurisdiction, the action is brought in  
23 the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must contain a  
24 request for particular relief. Plaintiff must identify as a defendant only persons who personally  
25 participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v.  
26 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation  
27 of a constitutional right if he does an act, participates in another's act or omits to perform an act  
28 he is legally required to do that causes the alleged deprivation).

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

5 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d  
6 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any  
7 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.  
8 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff’s claims must be  
9 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema  
10 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,  
11 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8.

12 An amended complaint must be complete in itself without reference to any prior pleading.  
13 E.D. Cal. R. 220. Once plaintiff files an amended complaint, all prior pleadings are superseded.  
14 Any amended complaint should contain all of the allegations related to his claim in this action. If  
15 plaintiff wishes to pursue his claims against the defendant, they must be set forth in the amended  
16 complaint.

17 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has  
18 evidentiary support for his allegations, and for violation of this rule the court may impose  
19 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

## 20 CONCLUSION

21 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED as  
22 follows:

23 1. Plaintiff has stated potentially cognizable claims for retaliation and deliberate  
24 indifference to his medical needs against defendant Mendez.

25 2. Plaintiff’s other claims and defendants are dismissed with leave to amend.

26 3. Plaintiff may choose to proceed immediately on his potentially cognizable claims  
27 against defendant Mendez as set out above or he may choose to amend his first amended

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1 complaint. If plaintiff chooses to proceed on his potentially cognizable claims, he shall  
2 voluntarily dismiss his other claims and defendants.

3 4. Within thirty days of the date of this order, plaintiff shall fill out and return the  
4 attached form indicating how he would like to proceed in this action.

5 5. Plaintiff is warned that his failure to comply with this order will result in a  
6 recommendation that this action be dismissed.

7 Dated: June 4, 2024

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10 DEBORAH BARNES  
11 UNITED STATES MAGISTRATE JUDGE  
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PLAINTIFF'S NOTICE ON HOW TO  
PROCEED

Check one:

Plaintiff wants to proceed immediately on his claims for retaliation and deliberate indifference to his medical needs against defendant Mendez in the first amended complaint. Plaintiff understands that by going forward without amending the first amended complaint he is voluntarily dismissing all other claims and defendants.

Plaintiff wants to amend the first amended complaint.

DATED: \_\_\_\_\_

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Plaintiff William B. Anderson, Pro Se