



1 REOPENED for purposes of a review pursuant to 28 U.S.C. § 1915A.

2 After reviewing the complaint, the Court now dismisses it for failure to state a  
3 cognizable claim for relief.

#### 4 STANDARD OF REVIEW

5 Federal courts must engage in a preliminary screening of cases in which prisoners  
6 seek redress from a governmental entity or officer or employee of a governmental entity.  
7 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the  
8 complaint, or any portion of the complaint, if the complaint “is frivolous, malicious, or  
9 fails to state a claim upon which relief may be granted,” or “seeks monetary relief from a  
10 defendant who is immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be  
11 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
12 1990).

13 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement  
14 of the claim showing that the pleader is entitled to relief." "Specific facts are not  
15 necessary; the statement need only "give the defendant fair notice of what the . . . claim  
16 is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200  
17 (2007) (citations omitted). Although in order to state a claim a complaint “does not need  
18 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his  
19 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic  
20 recitation of the elements of a cause of action will not do. . . . Factual allegations must  
21 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*  
22 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer  
23 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se  
24 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,  
25 699 (9th Cir. 1990).

26 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1)  
27 that a right secured by the Constitution or laws of the United States was violated, and (2)  
28 that the alleged violation was committed by a person acting under the color of state law.

1 *West v. Atkins*, 487 U.S. 42, 48 (1988).

2 **ANALYSIS**

3 Petitioner alleges that he arrived at San Quentin State Prison on April 14, 2010,  
4 and he did not receive his medication until seven days later. Plaintiff does not identify  
5 the medication in his complaint, but only describes it as medication for “pain” and for  
6 “chronic care.” However, the administrative appeals attached to the complaint identify  
7 the medication as methadone. Plaintiff alleges that as a consequence of not receiving the  
8 medication he fainted and hit his head, and that on June 2, 2010, Defendant Dr. Tootell  
9 examined him, informed him that he had brain damage and ordered an M.R.I. test. She  
10 also told plaintiff that she did not know why he had not received the medication when he  
11 first arrived at San Quentin.

12 Plaintiff names two defendants, San Quentin State Prison Health Services and  
13 Dr. Tootell. The Eleventh Amendment bars Plaintiff’s suit against San Quentin. *See* ;  
14 *Allison v. Cal. Adult Authority*, 419 F.2d 822, 823 (9th Cir. 1969) (11th Amendment bars  
15 suits against San Quentin State Prison). As for Defendant Dr. Tootell, Plaintiff’s  
16 allegations make clear that she did not cause the alleged failure to provide him  
17 medication. Liability may be imposed on an individual defendant under 42 U.S.C. §  
18 1983 if the plaintiff can show that the defendant proximately caused the deprivation of a  
19 federally protected right. *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988). At the  
20 pleading stage, “[a] plaintiff must allege facts, not simply conclusions, that show that an  
21 individual was personally involved in the deprivation of his civil rights.” *Barren v.*  
22 *Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiff’s allegations indicate that Dr.  
23 Tootell did not become involved in his care until June 2, 2010, approximately six weeks  
24 after he was already receiving medication. Her only alleged actions were that she  
25 examined him for his head injury, opine that he might have brain damage, order an  
26 M.R.I., and inform him that she did not know why he had been deprived of his  
27 medication six weeks earlier. Even if the deprivation of his medication for seven days  
28 amounted to a cognizable claim under the Eighth Amendment, *see Estelle v. Gamble*,

1 429 U.S. 97, 104 (1976) (deliberate indifference to serious medical needs violates the  
2 Eighth Amendment), it is clear from Plaintiff's allegations that Dr. Tootell was not  
3 involved in such a deprivation and certainly did not proximately cause it.

4 Consequently, plaintiff has not stated cognizable claims against either Defendant.  
5 Leave to amend is not warranted because it is clear from the allegations in the complaint  
6 establish that the claims are not cognizable against the Defendants, and as a result any  
7 amendment would be futile.


### 8 **CONCLUSION**

9 For the foregoing reasons, the dismissal order and judgment of May 3, 2011, are  
10 VACATED. The case is DISMISSED for failure to state a cognizable claim for relief.

11 The Clerk shall enter a new judgment and close the file.

12 IT IS SO ORDERED.

13  
14 DATED: May 6, 2011

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17 JEFFREY S. WHITE  
18 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROLAND E HOWARD,  
Plaintiff,

Case Number: CV11-00999 JSW  
**CERTIFICATE OF SERVICE**

v.

IN RE: ROLAND E HOWARD et al,  
Defendant.


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I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on May 6, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Roland E. Howard  
#AC8869  
San Quentin State Prison  
Marin, CA 94974

Dated: May 6, 2011

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk