

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL HERNANDEZ, JR.,)	No. C 11-2740 JSW (PR)
)	
Plaintiff,)	ORDER OF DISMISSAL
)	
v.)	
)	
SANTA CLARA COUNTY; SANTA)	
CLARA VALLEY HEALTH &)	
HOSPITAL SYSTEM ADULT)	
CUSTODY HEALTH CARE; SANTA)	
CLARA COUNTY DEPARTMENT OF)	
CORRECTIONS,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Plaintiff, an inmate at the Santa Clara County Jail proceeding pro se, filed this rights action pursuant to 42 U.S.C. § 1983. The complaint was dismissed with leave to amend. Plaintiff filed an amended complaint that does not cure the deficiencies in the original complaint. The Court now reviews the complaint and dismisses it with leave to amend.

DISCUSSION

I. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss any portion

1 of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim upon
2 which relief may be granted,” or “seeks monetary relief from a defendant who is immune
3 from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed.

4 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

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

18 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements:

- 19 (1) that a right secured by the Constitution or laws of the United States was violated, and
20 (2) that the alleged violation was committed by a person acting under the color of state
21 law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

22 II. Legal Claims

23 The original complaint was dismissed because the only defendants were the
24 “Santa Clara Valley Health and Hospital System Adult Custody Health Care” and the
25 Santa Clara County Department of Corrections, and Plaintiff had not alleged a policy that
26 amounted to deliberate indifference to his Eighth Amendment rights and that was the
27 moving force behind his failure to receive adequate medical treatment, as is required to
28 succeed on a claim against a local government entity. *See Plumeau v. School Dist. #40*

1 *County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). Plaintiff was given leave to
2 amend to so allege or, alternatively, to name individual defendants whose actions or
3 omissions by them that proximately caused Plaintiff to go without the medical treatment
4 he needed. Plaintiff has done neither. The amended complaint adds the County of Santa
5 Clara as a defendant, but does not allege a policy or that the policy was the moving force
6 behind his inadequate medical care, as required by *Plumeau*. This case will be dismissed
7 because, as Plaintiff was warned, he did not cure the deficiencies in his original
8 complaint.

9 **CONCLUSION**

10 In light of the foregoing, this case is DISMISSED.

11 The clerk shall enter judgment and close the file.

12 IT IS SO ORDERED.

13 DATED: September 8, 2011

14 
15 _____
16 JEFFREY S. WHITE
17 United States District Judge
18
19
20
21
22
23
24
25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 PAUL HERNANDEZ JR,
6 Plaintiff,

Case Number: CV11-02740 JSW

7 **CERTIFICATE OF SERVICE**

8 v.

9 SANTA CLARA VALLEY HEALTH AND
10 HOSPITAL SYSTEM ADULT CUSTODY
11 HEALTH CARE et al,

Defendant.
_____ /

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

14 That on September 8, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
15 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
16 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
17 delivery receptacle located in the Clerk's office.

18 Paul Hernandez
19 T-05919
20 North Kern State Prison
21 PO Box 4999
22 Delano, CA 93216

23 Dated: September 8, 2011



24 Richard W. Wieking, Clerk
25 By: Jennifer Ottolini, Deputy Clerk
26
27
28