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United States District Court  
For the Northern District of California

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

TERRY HAWES,  
Plaintiff,

No. C 12-2024 WHA (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

v.

JERRY BROWN,  
Defendant.

\_\_\_\_\_ /

**INTRODUCTION**

Plaintiff, a California prisoner proceeding pro se, filed this civil rights action under 42 U.S.C. 1983. His motion for leave to proceed in forma pauperis is granted in a separate order. For the reasons discussed below, the case is **DISMISSED** with leave to amend.

**ANALYSIS**

**A. 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). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699

1 (9th Cir. 1990).

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

13 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
14 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
15 the alleged deprivation was committed by a person acting under the color of state law. *West v.*  
16 *Atkins*, 487 U.S. 42, 48 (1988).

17 **B. LEGAL CLAIMS**

18 Plaintiff alleges that he is being forced against his will to take psychiatric medication.  
19 The Supreme Court has recognized a liberty interest in freedom from unwanted antipsychotic  
20 drugs. *Washington v. Harper*, 494 U.S. 210, 221-22 (1990). When liberally construed,  
21 therefore, the complaint could state a cognizable claim for the violation of his right to due  
22 process. However, plaintiff only names as a defendant the Governor of California. There is not  
23 allegation that the Governor was directly involved in administering or approving the medication.  
24 The Governor cannot be held liable for the conduct of his subordinates simply because he is  
25 their supervisor. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Plaintiff will be given  
26 leave to amend his complaint to name as defendants any officials who were directly involved in  
27 forcibly administering the medication or whose actions proximately caused the medication to be  
28 administered. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (liability may be imposed

1 on an individual defendant under Section 1983 if the plaintiff can show that the defendant  
2 proximately caused the deprivation of a federally protected right).

3 **CONCLUSION**

4 For the foregoing reasons,

5 1. The complaint is **DISMISSED** with leave to amend, as indicated above, within thirty  
6 days from the date of this order. The amended complaint must include the caption and civil  
7 case number used in this order (No. C 12-2024 WHA (PR)) and the words AMENDED  
8 COMPLAINT on the first page. Because an amended complaint completely replaces the  
9 original complaint, plaintiff must include in it all the claims he wishes to present. *See Ferdik v.*  
10 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the  
11 original complaint by reference. Failure to amend within the designated time and in accordance  
12 with this order will result in the dismissal of this case.

13 2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
14 informed of any change of address by filing with the clerk a separate paper headed "Notice of  
15 Change of Address." Papers intended to be filed in this case should be addressed to the clerk  
16 and not to the undersigned. Petitioner also must comply with the Court's orders in a timely  
17 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute  
18 pursuant to Federal Rule of Civil Procedure 41(b).

19 IT IS SO ORDERED.

20 Dated: June 7, 2012.

  
\_\_\_\_\_  
21 WILLIAM ALSUP  
22 UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

IN RE TERRY HAWES,  
Plaintiff,

Case Number: CV12-02024 WHA  
**CERTIFICATE OF SERVICE**

v.

IN RE TERRY HAWES 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 June 8, 2012, 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.

Terry Ray Hawes  
AB7051  
Salinas Valley State Prison  
PO Box 1050  
Soledad, CA 93960-1050

Attorney General's Office  
455 Golden Gate Avenue  
San Francisco, CA 94102

Dated: June 8, 2012

  
Richard W. Wieking, Clerk  
By: Lashanda Scott, Deputy Clerk