

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL KENNETH HADDEN,
Plaintiff,
v.
STEVE KERNAN, et al.,
Defendants.

Case No. [16-cv-02686-JCS](#) (PR)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

INTRODUCTION

Plaintiff, a California state prisoner proceeding pro se, has filed this federal civil rights action under 42 U.S.C. § 1983 and other statutes in which he alleges medical staff at Salinas Valley State Prison provided constitutionally inadequate medical care. After conducting a review under 28 U.S.C. § 1915(e), the Court DISMISSES the complaint with leave to file an amended complaint on or before August 15, 2016.¹

DISCUSSION

A. Standard of Review

In its initial review of this pro se complaint, this Court must dismiss any claim that is frivolous or malicious, or fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e). Pro se pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

¹ Plaintiff consented to magistrate judge jurisdiction. (Docket No. 6.) The magistrate judge, then, has jurisdiction to issue this order, even though defendants have not been served or consented to magistrate judge jurisdiction. *See Neals v. Norwood*, 59 F.3d 530, 532 (5th Cir. 1995).

1 A “complaint must contain sufficient factual matter, accepted as true, to ‘state a
2 claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
3 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
4 plausibility when the plaintiff pleads factual content that allows the court to draw the
5 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting
6 *Twombly*, 550 U.S. at 556). Furthermore, a court “is not required to accept legal
7 conclusions cast in the form of factual allegations if those conclusions cannot reasonably
8 be drawn from the facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55
9 (9th Cir. 1994).

10 **B. Legal Claims**

11 Plaintiff alleges claims under 42 U.S.C. §§ 1983-1985 and various state laws.

12 **1. Section 1983**

13 **(a) Claims Against Medical Staff**

14 Plaintiff alleges that from 2009 to 2011 and in 2013, Drs. Gamboa, E. Sullivan, M.
15 Danial, K. Kumar, each at times plaintiff’s primary care physician at Salinas Valley State
16 Prison, violated his Eighth Amendment rights by failing to provide appropriate
17 medications. He also alleges that E. Golding, a nurse; M. Sepulveda, Chief Medical
18 Officer; G. Ellis, Chief Executive Officer; and L.D. Zamora failed to intervene when they
19 reviewed plaintiff’s complaints about his physicians’ treatment.

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

24 When liberally construed, plaintiff has stated claims against Drs. Gamboa, E.
25 Sullivan, M. Danial, K. Kumar, M. Sepulveda, G. Ellis, and L.D. Zamora. These claims,
26 though cognizable, must be realleged in the amended complaint. If they do not appear in
27 the new complaint, they will be deemed waived.

28 He claims that E. Golding, a nurse, also failed to intervene. However, he fails to

1 state what her job at Salinas Valley is or how she was in a position to approve or alter
2 plaintiff's treatment. Accordingly, the claim against Golding is DISMISSED with leave to
3 amend.

4 **(b) Claims Against Supervisory Personnel**

5 Plaintiff's claims against the supervisory defendants (R.T.C. Grounds, Warden;
6 W.L. Muniz, Acting Warden; J.A. Beard, Secretary of the California Department of
7 Corrections and Rehabilitation; M. Sepulveda, Chief Medical Officer at Salinas Valley; A.
8 Adams, Chief Medical Executive Officer at Salinas Valley; and D. Bright, Chief Primary
9 Health Care Provider at Salinas Valley) are DISMISSED with leave to amend. The
10 allegations against them are not only conclusory, they fail to show liability arising from the
11 alleged acts of those they supervise.

12 The Court instructs plaintiff to carefully consider the following. It is very difficult
13 to plead claims against persons based on their role as supervisors, especially where, as
14 here, there are no facts showing, as opposed to speculating, that any of these defendants
15 had a personal involvement in any of the allegedly unconstitutional acts. There is no
16 respondeat superior liability under § 1983, *see Taylor v. List*, 880 F.2d 1040, 1045 (9th
17 Cir. 1989), which means that a person is not automatically held responsible simply because
18 he or she is a supervisor of an employee who commits a wrong. It is not enough that the
19 supervisor merely has a supervisory relationship over the defendants; the plaintiff must
20 show that the supervisor "participated in or directed the violations, or knew of the
21 violations and failed to act to prevent them." *Id.* (emphasis added). Furthermore,
22 supervisor defendants are entitled to qualified immunity where the allegations against them
23 are simply "bald" or "conclusory" because such allegations do not "plausibly" establish the
24 supervisors' personal involvement in their subordinates' constitutional wrong. *Iqbal*, 556
25 U.S. at 675-82. There is nothing in the complaint that indicates personal knowledge or
26 involvement.

27 It is recommended that plaintiff focus his allegations on the persons he had direct
28 contact with, such as prison guards. He is encouraged to carefully consider the following

1 when amending his complaint. “A person deprives another ‘of a constitutional right,
2 within the meaning of section 1983, if he does an affirmative act, participates in another’s
3 affirmative acts, or omits to perform an act which he is legally required to do that causes
4 the deprivation of which [the plaintiff complains].” *Leer v. Murphy*, 844 F.2d 628, 633
5 (9th Cir. 1988) (quoting *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978)). The inquiry
6 into causation must be individualized and focus on the duties and responsibilities of each
7 individual defendant whose acts or omissions are alleged to have caused a constitutional
8 deprivation. *Id.*

9 Steve Kernan is listed as a defendant in the caption, but the complaint contains no
10 allegations against him. Accordingly, he is DISMISSED as a defendant. If plaintiff
11 wishes to pursue claims against Kernan, he must provide legally sufficient allegations in
12 his amended complaint.

13 **2. Section 1984**

14 This is not an operative statute. Sections one and two of 42 U.S.C. § 1984 were
15 declared unconstitutional by the Supreme Court. *United States v. Singleton*, 109 U.S. 3
(1883). Sections three and four were repealed by Congress in 1948. Accordingly,
16 plaintiff’s claims under section 1984 are DISMISSED WITH PREJUDICE.

17 **3. Section 1985**

18 Plaintiff alleges in a conclusory fashion that defendants conspired to violate his
19 constitutional rights. He seeks relief under 42 U.S.C. § 1985(3).² “The elements of a
20 § 1985(3) claim are: (1) the existence of a conspiracy to deprive the plaintiff of the equal
21 protection of the laws; (2) an act in furtherance of the conspiracy and (3) a resulting
22 injury.” *Addisu v. Fred Meyer, Inc.*, 198 F.3d 1130, 1141 (9th Cir. 2000) (citation
23 omitted). “A mere allegation of conspiracy without factual specificity is insufficient.”

24
25 ² He does not specify that his claim is brought under subpart (3), but the Court
26 assumes he means to. The other two subparts are inapplicable. Section 1985(1) provides a
27 cause of action for preventing or impeding an officer of the United States from performing
28 his or her duties. *See Kush v. Rutledge*, 460 U.S. 719, 724 (1983). Section 1985(2)
provides a cause of action for conspiracy to obstruct justice in the federal or state courts or
to intimidate a party, witness or juror in connection therewith. *Id.* at 724-27.

1 *Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 626 (9th Cir. 1988); *see*
2 *Steshenko v. Albee*, 442 F. Supp. 3d 1281, 1294 (N.D. Cal. 2014) (conspiracy allegations
3 under section 1985(3) found insufficient because plaintiff failed to allege a specific
4 agreement between defendants; the scope of the conspiracy; each defendant’s role in the
5 conspiracy; when and how the conspiracy operated; and what action was taken in
6 furtherance of that conspiracy).

7 Plaintiff fails to state a claim. Alleging in a conclusory fashion that defendants
8 conspired to violate his rights is a “formulaic recitation of the elements of a cause of
9 action,” and therefore is insufficient to plead a claim. *Twombly*, 550 U.S. at 555 (internal
10 citations omitted). He fails to allege a specific, as opposed to an assumed, agreement to
11 deprive him of his rights, the scope of the conspiracy, what each defendant’s specific role
12 in the conspiracy was, etc. The present allegations rest on speculation. It is insufficient to
13 say that because defendants all violated his right to adequate medical care, there
14 necessarily was a conspiracy to violate that right. Accordingly, his claims under section
15 1985 are DISMISSED with leave to amend.

16 **4. State Law Claims**

17 Plaintiff’s state law claims will be dismissed. First, his claims under California
18 Business and Professions Code section 17200 are DISMISSED because they are
19 insufficiently related by law or fact to his medical treatment claims. Plaintiff may wish to
20 raise such claims in a state court action.

21 Second, his claims under California’s penal code are DISMISSED WITH
22 PREJUDICE because only the government can file criminal charges.

23 **CONCLUSION**

24 The complaint is DISMISSED with leave to amend. **Plaintiff shall file an**
25 **amended complaint on or before August 15, 2016.** The first amended complaint must
26 include the caption and civil case number used in this order (16-2686 JCS (PR)) and the
27 words FIRST AMENDED COMPLAINT on the first page. It must address all deficiencies
28 discussed above. Because an amended complaint completely replaces the previous

1 complaints, plaintiff must include in his first amended complaint all the claims he wishes
2 to present and all of the defendants he wishes to sue. *See Ferdik v. Bonzelet*, 963 F.2d
3 1258, 1262 (9th Cir. 1992). Plaintiff may not incorporate material from the prior
4 complaint by reference. Any claims not raised in the amended complaint will be deemed
5 waived. Failure to file an amended complaint in accordance with this order will result in
6 dismissal of this action without further notice to plaintiff.

7 It is plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
8 informed of any change of address by filing a separate paper with the clerk headed "Notice
9 of Change of Address." He must comply with the Court's orders in a timely fashion or ask
10 for an extension of time to do so. Failure to comply may result in the dismissal of this
11 action pursuant to Federal Rule of Civil Procedure 41(b).

12 **IT IS SO ORDERED.**

13 **Dated:** July 12, 2016

14
15
16 
17 JOSEPH C. SPERO
18 Chief Magistrate Judge

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL KENNETH HADDEN,
Plaintiff,
v.
STEVE KERNAN, et al.,
Defendants.

Case No. [16-cv-02686-JCS](#)

CERTIFICATE OF SERVICE

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 July 12, 2016, 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.

Michael Kenneth Hadden ID: J-31769
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960-1050

Dated: July 12, 2016

Susan Y. Soong
Clerk, United States District Court

By: Karen L. Hom
Karen Hom, Deputy Clerk to the
Honorable JOSEPH C. SPERO