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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON ROBERT ALFORD,
Plaintiff,
v.
CAL REMINGTON, et al.,
Defendants.

Case No. [17-cv-00460-JSC](#)

**ORDER OF DISMISSAL WITH
FURTHER LEAVE TO AMEND**

Plaintiff, an inmate at the Maple Street Correctional Center (“MSCC”) in Redwood City, California, filed this pro se civil rights complaint under 42 U.S.C. § 1983 against Cal Remington, the “Head” of San Mateo County Correctional Health Services, and Dr. Douglas Spencer, a doctor at MSCC.¹ He alleged that he did not receive the correct medication from the person dispensing medicine at MSCC. After reviewing the complaint under 28 U.S.C. § 1915A(a), the Court found that Plaintiff had not stated a cognizable claim for relief against Defendants because he had not alleged what they had done or failed to do to cause him to receive the wrong medication. *See Lemire v. Cal. Dept. of Corrections & Rehabilitation*, 726 F.3d 1062, 1085 (9th Cir. 2013). The complaint was dismissed with leave to file an amended complaint correcting this deficiency, and Plaintiff was cautioned that if he did not do so this case would be dismissed.

Plaintiff has filed a timely amended complaint alleging that on one occasion an unnamed nurse failed to look up what medication Plaintiff required, and she gave him medication for diabetes and high blood pressure instead of Benadryl (which Plaintiff took for a rash). There are no allegations in the amended complaint as to what Remington or Spencer did or failed to do, let alone that they caused Plaintiff to receive the wrong medication. If they are the nurse’s supervisor

¹ Plaintiff consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c). (ECF No. 4.)

1 or employer, that does not render them liable because under no circumstances is there liability
2 under Section 1983 for an employer or supervisor solely because he or she is responsible for the
3 actions or omissions of a subordinate or employee. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th
4 Cir. 1989). As Plaintiff's first amended complaint does not cure the deficiencies in the original
5 complaint, it is DISMISSED.

6 The allegations in the first amended complaint, when liberally construed, do state a
7 cognizable claim against the nurse under the Eighth Amendment for deliberate indifference to his
8 medical needs, but Plaintiff does not list the nurse as a defendant. If Plaintiff wants to sue the
9 nurse, he must file another amended complaint in which he names the nurse as a defendant.
10 Within sixty days of the date this order is filed, Plaintiff may file a second amended complaint that
11 names the nurse as a defendant and provides his or her current location, or show cause why he
12 needs additional time to do so. If Plaintiff wishes to conduct discovery to ascertain the nurse's
13 name, he may do so at this time. The second amended complaint **must** include the caption and
14 civil case number used in this order (No. C 17-0460 JSC (PR)) and the words "COURT-
15 ORDERED SECOND AMENDED COMPLAINT" on the first page.

16 Because an amended complaint completely replaces the original complaint, *see Ferdik v.*
17 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992), Plaintiff may not incorporate material from the
18 original or first amended complaint by reference; he must include in his second amended
19 complaint all the claims he wishes to pursue. Failure to amend within the designated time and in
20 accordance with this order will result in the dismissal of this action.

21 **IT IS SO ORDERED.**

22 Dated: August 24, 2017

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24 JACQUELINE SCOTT CORLEY
25 United States Magistrate Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AARON ROBERT ALFORD,
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Case No. [17-cv-00460-JSC](#)

CERTIFICATE OF SERVICE

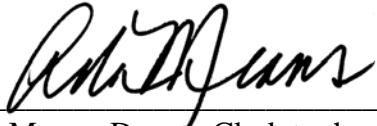
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 24, 2017, 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.

Aaron Robert Alford
318 Palmetto Avenue #147
Pacifica, CA 94044

Dated: August 24, 2017

Susan Y. Soong
Clerk, United States District Court

By: 
Ada Means, Deputy Clerk to the
Honorable JACQUELINE SCOTT CORLEY