

United States District Court  
For the Northern District of California

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

MELVIN D. PRICE,

No. C 09-06050 SBA (PR)

Plaintiff,

**ORDER OF SERVICE**

v.

DR. HENRY, et al.,

Defendants.

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**INTRODUCTION**

Plaintiff, a state prisoner at Salinas Valley State Prison (SVSP), has filed a pro se civil rights action pursuant to 42 U.S.C. § 1983 alleging that Defendants were deliberately indifferent to his serious medical needs.

His motion for leave to proceed in forma pauperis has been granted.

Venue is proper because the events giving rise to the claim are alleged to have occurred at SVSP, which is located in this judicial district. See 28 U.S.C. § 1391(b).

In his complaint, Plaintiff names the following Defendants: SVSP Surgeon Dr. Henry, SVSP Registered Nurse Olsen, the warden of SVSP,<sup>1</sup> and Doe Defendants.<sup>2</sup> Plaintiff seeks monetary damages.

**DISCUSSION**

**I. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks 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 that

<sup>1</sup> Plaintiff names Defendant "Salinas Valley State Prison," however, the Court construes this Defendant to be the warden of SVSP.

<sup>2</sup> Plaintiff states "Et Al, Defendant(s) played roles or had knowledge of information leading to plaintiff's injuries." (Compl. Attach. at 6.) The Court construes these Defendants to be Doe Defendants.

1 are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary  
2 relief from a defendant who is immune from such relief. Id. § 1915A(b)(1), (2). Pro se pleadings  
3 must be liberally construed. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988).

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

5 (1) that a right secured by the Constitution or laws of the United States was violated, and

6 (2) that the alleged violation was committed by a person acting under the color of state law. West v.  
7 Atkins, 487 U.S. 42, 48 (1988).

## 8 **II. Deliberate Indifference Claim**

9 Deliberate indifference to serious medical needs violates the Eighth Amendment's  
10 proscription against cruel and unusual punishment. See Estelle v. Gamble, 429 U.S. 97, 104 (1976);  
11 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX  
12 Technologies, Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc); Jones v. Johnson, 781  
13 F.2d 769, 771 (9th Cir. 1986). A determination of "deliberate indifference" involves an examination  
14 of two elements: the seriousness of the prisoner's medical need and the nature of the defendant's  
15 response to that need. See McGuckin, 974 F.2d at 1059. A "serious" medical need exists if the  
16 failure to treat a prisoner's condition could result in further significant injury or the "unnecessary  
17 and wanton infliction of pain." Id. (citing Estelle v. Gamble, 429 U.S. at 104). A prison official is  
18 deliberately indifferent if he or she knows that a prisoner faces a substantial risk of serious harm and  
19 disregards that risk by failing to take reasonable steps to abate it. Farmer v. Brennan, 511 U.S. 825,  
20 837 (1994).

21 Plaintiff alleges that he had a "lump," i.e., a mass, located on the right side of his head.  
22 (Compl. at 3.) On April 8, 2009, Defendant Henry, a surgeon at the Correctional Treatment Center  
23 (CTC) at SVSP, performed surgery to remove the mass in a multipurpose room that was not sterile.  
24 (Id.) Plaintiff suffered "a great deal of pain" from the surgery, which was performed without any  
25 pain medication and was "cleaned with peroxide which was a big joke at CTC . . . ." (Id.; Attach. at  
26 3.) Furthermore, he was not prescribed antibiotics or pain medication after the surgery. (Id.) As a  
27 result, he suffered "extreme pain" from a "serious infection," which was not treated until April 17,  
28 2009. (Compl. at 3; Attach., Ex. B#2.) The existence of the mass needing removal on Plaintiff's

1 head supports an inference that he had serious medical needs. Liberally construed, Plaintiff's  
2 allegations that Defendants performed surgery to remove the mass without any pain medication and  
3 failed to provide adequate medical treatment for the resulting infection -- between April 8, 2009 and  
4 April 17, 2009 -- state a cognizable deliberate indifference claim against Defendants Henry and  
5 Olsen. Accordingly, this claim may proceed against these Defendants.

6 **III. Defendants**

7 **A. Claim Against Warden of SVSP**

8 Plaintiff names the warden of SVSP as a Defendant because he "allowed [Defendants] to be  
9 employed . . . [and] practice medical procedure(s) at the State of California and at all time  
10 mentioned herein assigned as employes of [Defendants] in which condone there [sic] act(s)."  
11 (Compl. Attach. at 5-6.) Plaintiff bases his claim against the warden of SVSP on an overall  
12 responsibility of ensuring that the medical staff of SVSP is not deliberately indifferent to the serious  
13 medical needs of inmates. However, the warden of SVSP is not linked specifically to the  
14 allegations in the body of the complaint.

15 Liability may be imposed on an individual defendant under § 1983 if the plaintiff can show  
16 that the defendant proximately caused the deprivation of a federally protected right. See Leer v.  
17 Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th  
18 Cir. 1981). A person deprives another of a constitutional right within the meaning of § 1983 if he  
19 does an affirmative act, participates in another's affirmative act or omits to perform an act which he  
20 is legally required to do, that causes the deprivation of which the plaintiff complains. See Leer, 844  
21 F.2d at 633. The inquiry into causation must be individualized and focus on the duties and  
22 responsibilities of each individual defendant whose acts or omissions are alleged to have caused a  
23 constitutional deprivation. See id. Sweeping conclusory allegations will not suffice; the plaintiff  
24 must instead "set forth specific facts as to each individual defendant's" deprivation of protected  
25 rights. Leer, 844 F.2d at 634.

26 A supervisor may be liable under § 1983 upon a showing of (1) personal involvement in the  
27 constitutional deprivation or (2) a sufficient causal connection between the supervisor's wrongful  
28 conduct and the constitutional violation. Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th

1 Cir. 1991) (en banc) (citation omitted). Here, Plaintiff has alleged neither.

2 Therefore, Plaintiff's supervisory liability claim against the warden of SVSP is DISMISSED  
3 with leave to amend. Furthermore, Plaintiff must specify the name the warden of SVSP when  
4 amending his supervisory liability claim. Accordingly, Plaintiff may file an amendment to the  
5 complaint alleging supervisory liability under the standards explained above.

6 **B. Claim Against Doe Defendant**

7 Plaintiff identifies Doe Defendants whose names he intends to learn through discovery. The  
8 use of Doe Defendants is not favored in the Ninth Circuit. See Gillespie v. Civiletti, 629 F.2d 637,  
9 642 (9th Cir. 1980). However, where the identity of alleged defendants cannot be known prior to  
10 the filing of a complaint the plaintiff should be given an opportunity through discovery to identify  
11 them. Id. Failure to afford the plaintiff such an opportunity is error. See Wakefield v. Thompson,  
12 177 F.3d 1160, 1163 (9th Cir. 1999). Accordingly, the claims against Doe Defendants are  
13 DISMISSED from this action without prejudice. Should Plaintiff learn Doe Defendants' identities  
14 through discovery, he may move to file an amended complaint to add them as named defendants.  
15 See Brass v. County of Los Angeles, 328 F.3d 1192, 1195-98 (9th Cir. 2003).

16 **CONCLUSION**

17 For the foregoing reasons, the Court orders as follows:

18 1. Plaintiff states a cognizable Eighth Amendment claim for deliberate indifference to  
19 serious medical needs against Defendants Henry and Olsen.

20 2. Plaintiff's supervisory liability claim against the warden of SVSP is DISMISSED  
21 WITH LEAVE TO AMEND as indicated above.

22 3. Within **thirty (30) days** of the date of this Order, Plaintiff may file an amended  
23 supervisory liability claim against the warden of SVSP as set forth above in Section III(A) of this  
24 Order. (Plaintiff shall resubmit only that claim and not the entire complaint.) The amended claim  
25 must be submitted on an amendment to the complaint. It must include the caption as well as the  
26 civil case number of this action (C 09-06050 SBA (PR)) and the words AMENDMENT TO THE  
27 COMPLAINT on the first page. The failure to do so will result in the dismissal without prejudice of  
28 the supervisory liability claim against the warden of SVSP.

1           4.       The claims against the Doe Defendants are DISMISSED WITHOUT PREJUDICE.

2           5.       The Clerk of the Court shall mail a Notice of Lawsuit and Request for Waiver of  
3 Service of Summons, two copies of the Waiver of Service of Summons, a copy of the complaint and  
4 all attachments thereto (docket no. 1) and a copy of this Order to **SVSP Surgeon Dr. Henry and**  
5 **SVSP Registered Nurse Olsen**. The Clerk of the Court shall also mail a copy of the complaint and  
6 a copy of this Order to the State Attorney General's Office in San Francisco. Additionally, the Clerk  
7 shall mail a copy of this Order to Plaintiff.

8           6.       Defendants are cautioned that Rule 4 of the Federal Rules of Civil Procedure requires  
9 them to cooperate in saving unnecessary costs of service of the summons and complaint. Pursuant to  
10 Rule 4, if Defendants, after being notified of this action and asked by the Court, on behalf of  
11 Plaintiff, to waive service of the summons, fail to do so, they will be required to bear the cost of such  
12 service unless good cause be shown for their failure to sign and return the waiver form. If service is  
13 waived, this action will proceed as if Defendants had been served on the date that the waiver is filed,  
14 except that pursuant to Rule 12(a)(1)(B), Defendants will not be required to serve and file an answer  
15 before **sixty (60) days** from the date on which the request for waiver was sent. (This allows a longer  
16 time to respond than would be required if formal service of summons is necessary.) Defendants are  
17 asked to read the statement set forth at the foot of the waiver form that more completely describes  
18 the duties of the parties with regard to waiver of service of the summons. If service is waived after  
19 the date provided in the Notice but before Defendants have been personally served, the Answer shall  
20 be due **sixty (60) days** from the date on which the request for waiver was sent or **twenty (20) days**  
21 from the date the waiver form is filed, whichever is later.

22           7.       Defendants shall answer the complaint in accordance with the Federal Rules of Civil  
23 Procedure. The following briefing schedule shall govern dispositive motions in this action:

24           a.       No later than **ninety (90) days** from the date their answer is due, Defendants  
25 shall file a motion for summary judgment or other dispositive motion. The motion shall be  
26 supported by adequate factual documentation and shall conform in all respects to Federal Rule of  
27 Civil Procedure 56. If Defendants are of the opinion that this case cannot be resolved by summary  
28 judgment, they shall so inform the Court prior to the date the summary judgment motion is due. All

1 papers filed with the Court shall be promptly served on Plaintiff.

2           b. Plaintiff's opposition to the dispositive motion shall be filed with the Court  
3 and served on Defendants no later than **sixty (60) days** after the date on which Defendants' motion is  
4 filed. The Ninth Circuit has held that the following notice should be given to pro se plaintiffs facing  
5 a summary judgment motion:

6           The defendant has made a motion for summary judgment by which they seek  
7 to have your case dismissed. A motion for summary judgment under Rule 56 of the  
Federal Rules of Civil Procedure will, if granted, end your case.

8           Rule 56 tells you what you must do in order to oppose a motion for summary  
9 judgment. Generally, summary judgment must be granted when there is no genuine  
10 issue of material fact -- that is, if there is no real dispute about any fact that would  
11 affect the result of your case, the party who asked for summary judgment is entitled  
12 to judgment as a matter of law, which will end your case. When a party you are suing  
13 makes a motion for summary judgment that is properly supported by declarations (or  
14 other sworn testimony), you cannot simply rely on what your complaint says.  
15 Instead, you must set out specific facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict  
16 the facts shown in the defendant's declarations and documents and show that there is  
17 a genuine issue of material fact for trial. If you do not submit your own evidence in  
18 opposition, summary judgment, if appropriate, may be entered against you. If  
19 summary judgment is granted [in favor of the defendants], your case will be  
20 dismissed and there will be no trial.

21 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc).

22           Plaintiff is advised to read Rule 56 of the Federal Rules of Civil Procedure and Celotex Corp.  
23 v. Catrett, 477 U.S. 317 (1986) (party opposing summary judgment must come forward with  
24 evidence showing triable issues of material fact on every essential element of his claim). Plaintiff is  
25 cautioned that because he bears the burden of proving his allegations in this case, he must be  
26 prepared to produce evidence in support of those allegations when he files his opposition to  
27 Defendants' dispositive motion. Such evidence may include sworn declarations from himself and  
28 other witnesses to the incident, and copies of documents authenticated by sworn declaration.  
Plaintiff will not be able to avoid summary judgment simply by repeating the allegations of his  
complaint.

          c. If Defendants wish to file a reply brief, they shall do so no later than **thirty**  
**(30) days** after the date Plaintiff's opposition is filed.

          d. The motion shall be deemed submitted as of the date the reply brief is due.

1 No hearing will be held on the motion unless the Court so orders at a later date.


2 8. Discovery may be taken in this action in accordance with the Federal Rules of Civil  
3 Procedure. Leave of the Court pursuant to Rule 30(a)(2) is hereby granted to Defendants to depose  
4 Plaintiff and any other necessary witnesses confined in prison.

5 9. All communications by Plaintiff with the Court must be served on Defendants, or  
6 Defendants' counsel once counsel has been designated, by mailing a true copy of the document to  
7 Defendants or Defendants' counsel.

8 10. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court  
9 informed of any change of address and must comply with the Court's orders in a timely fashion.  
10 Failure to do so may result in the dismissal of this action for failure to prosecute, pursuant to Federal  
11 Rule of Civil Procedure 41(b).

12 11. Extensions of time are not favored, though reasonable extensions will be granted.  
13 Any motion for an extension of time must be filed no later than **fifteen (15) days** prior to the  
14 deadline sought to be extended.

15 DATED: 12/6/10

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge

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1 UNITED STATES DISTRICT COURT  
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3 NORTHERN DISTRICT OF CALIFORNIA

4 MELVIN D. PRICE,

5 Plaintiff,

6 v.

7 DR. HENRY et al,

8 Defendant.

Case Number: CV09-06050 SBA

**CERTIFICATE OF SERVICE**

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

11 That on December 8, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
14 located in the Clerk's office.

15 Melvin D. Price F-37541  
16 Salinas Valley State Prison  
17 31625 Highway 101 North  
18 P.O. Box 1050  
19 Soledad, CA 93960-1050

20 Dated: December 8, 2010

21 Richard W. Wieking, Clerk  
22 By: LISA R CLARK, Deputy Clerk  
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