

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA

3
4 ARMANDO RODRIGUEZ,
5 Plaintiff,
6 v.
7 GAVIN NEWSOM, et al.,
8 Defendants.

Case No. [19-cv-01378-YGR](#) (PR)

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND**

9 **I. INTRODUCTION**

10 Plaintiff, a civil detainee at Napa State Hospital (“NSH”), has filed a *pro se* civil rights
11 action pursuant to 42 U.S.C. § 1983. His motion for leave to proceed *in forma pauperis* has been
12 granted. Dkt. 11.

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

15 In his complaint, Plaintiff names the following Defendants: Governor Gavin Newsom; the
16 Department of State Hospitals (“DSH”); and DSH Deputy Director George Maynard. Dkt. 1 at 1.
17 Plaintiff sues these Defendants in their individual and official capacities. *Id.*

18 Plaintiff seeks declaratory and injunctive relief.

19 **II. DISCUSSION**

20 **A. Standard of Review**

21 A federal court must conduct a preliminary screening in any case in which a prisoner seeks
22 redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
23 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims
24 that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
25 monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se*
26 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
27 Cir. 1988).

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

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

4 **B. Legal Claims**

5 Plaintiff claims that he is a patient at NSH who belongs to one of the “four ‘Incompetent to
6 Stand Trial’ programs in the State of California.” Dkt. 1 at 2. It seems that Plaintiff was acquitted
7 of criminal charges by reason of insanity and has since been involuntarily civilly committed to
8 NSH. *Id.* However, he claims that due to “overcrowding,” patients are housed with less square
9 footage of space than legally mandated.” *Id.* Plaintiff alleges that such overcrowding has resulted
10 in the following: (1) insufficient educational, community re-entry, up-to-date treatment, and
11 specialty programs; (2) overworking nursing staff and affecting “their ability to properly perform
12 their work duties”; and (3) social workers’ caseloads being too high such that they are unable to
13 make time for their patients. *Id.* In addition, Plaintiff claims that DSH “regularly denies and/or
14 delays the release of patient records,” and DSH hospitals like NSH are “in dire need of repair and
15 maintenance.” *Id.* Thus, Plaintiff claims that his Eighth Amendment rights are violated based on
16 Defendants’ deliberate indifference to his serious mental health needs.

17 Deliberate indifference to a prisoner’s serious medical needs violates the Eighth
18 Amendment’s proscription against cruel and unusual punishment. *See Estelle v. Gamble*, 429 U.S.
19 97, 102-04 (1976). Prisoners’ mental health needs are among the medical needs covered by the
20 Eighth Amendment. *See generally Doty v. County of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994).
21 To prove that the response of prison officials to a prisoner’s mental health needs was
22 constitutionally deficient, the prisoner must establish (1) a serious mental health need and
23 (2) deliberate indifference to that need by prison officials. *See McGuckin v. Smith*, 974 F.2d 1050,
24 1059-60 (9th Cir. 1992), *overruled on other grounds, WMX Technologies, Inc. v. Miller*, 104 F.3d
25 1133, 1136 (9th Cir. 1997) (en banc).

26 Here, it seems that Plaintiff sues Defendants Newsom, Maynard, and the DSH on a theory
27 that they are legally responsible for the operation of NSH (and other hospitals), but Plaintiff
28 alleges no actions or omissions by them that caused the alleged constitutional violations.

1 First, the complaint does not state a claim against the municipal defendants (DSH and
2 Defendants Newsom and Maynard in their official capacity as Governor and DSH Deputy
3 Director, respectively). There is no respondeat superior liability under section 1983, i.e. no
4 liability under the theory that one is liable simply because he employs a person who has violated a
5 plaintiff's rights. *See Monell v. Dep't of Social Servs.*, 436 U.S. 658, 691 (1978); *Taylor v. List*,
6 880 F.2d 1040, 1045 (9th Cir. 1989). Thus, the mere fact that the alleged individual wrongdoer
7 was employed by one of these institutional defendants would not be a sufficient basis on which to
8 hold the employing institutional defendant liable. Local governments are "persons" subject to
9 liability under 42 U.S.C. § 1983 where official policy or custom causes a constitutional tort, *see*
10 *Monell*, 436 U.S. at 690. To impose municipal liability under section 1983 for a violation of
11 constitutional rights, a plaintiff must show: (1) that the plaintiff possessed a constitutional right of
12 which he or she was deprived; (2) that the municipality had a policy; (3) that this policy amounts
13 to deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is the
14 moving force behind the constitutional violation. *See Plumeau v. School Dist. #40 County of*
15 *Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997). For municipal liability, a plaintiff must plead
16 sufficient facts regarding the specific nature of the alleged policy, custom, or practice to allow the
17 defendant to defend itself effectively, and these facts must plausibly suggest that the plaintiff is
18 entitled to relief. *See AE v. County of Tulare*, 666 F.3d 631, 636-37 (9th Cir. 2012). It is not
19 sufficient to allege merely that a policy, custom, or practice existed or that individual officers'
20 wrongdoing conduct conformed to a policy, custom, or practice. *See id.* at 636-68.

21 Next, suing Defendants Newsom and Maynard in their individual capacities as Governor
22 and DSH Deputy Director, respectively, is not sufficient. Dkt. 1 at 1. As mentioned, there is no
23 respondeat superior liability under section 1983. *See Taylor*, 880 F.2d at 1045. It is not enough
24 that the supervisor merely has a supervisory relationship over the defendants (i.e., the unnamed
25 NSH staff); the plaintiff must show that the supervisor "participated in or directed the violations,
26 or knew of the violations and failed to act to prevent them." *Id.* Furthermore, supervisor
27 defendants are entitled to qualified immunity where the allegations against them are simply "bald"
28 or "conclusory" because such allegations do not "plausibly" establish the supervisors' personal

1 involvement in their subordinates' constitutional wrong. *Ashcroft v. Iqbal*, 556 U.S. 662, 676-83
2 (2009). Appropriate defendants would include the NSH staff who supervised his daily activities
3 and the nursing staff who were unable to provide adequate mental health treatment, etc. Plaintiff
4 also must provide names (or other identifying information), as well as dates, times, places, and
5 allegations that plausibly establish liability.

6 Accordingly, Plaintiff will be given leave to file an amended complaint in which he clearly
7 links each defendant to the alleged injury, or injuries, for which that defendant is alleged to be
8 responsible. While Plaintiff must, in filing his amended complaint, provide sufficient information
9 to give the defendants fair notice of the nature of the claims against them, Plaintiff need not
10 provide a lengthy narrative with respect to each defendant to satisfy the pleading requirements of
11 Rule 8. Instead, Plaintiff should provide a concise statement identifying each defendant and the
12 specific action or actions the defendant took, or failed to take, that allegedly caused the
13 deprivation of Plaintiff's constitutional rights, as well as the injury resulting therefrom.
14 Additionally, Plaintiff should not name any defendant who is linked solely in his respondeat
15 superior capacity or against whom Plaintiff cannot allege facts that would establish supervisory
16 liability.

17 **III. CONCLUSION**

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

19 1. The complaint is **DISMISSED** with leave to amend. Within **twenty-eight (28)**
20 **days** from the date of this Order, Plaintiff shall file his amended complaint as set forth above.
21 Plaintiff must use the attached civil rights form, write the case number for this action -- Case No.
22 C 19-1378 YGR (PR) -- on the form, clearly label the complaint "Amended Complaint," and
23 complete all sections of the form. Because the amended complaint completely replaces the
24 original complaint, Plaintiff must include in it all the claims he wishes to present. *See Ferdik v.*
25 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.), *cert. denied*, 506 U.S. 915 (1992). He may not
26 incorporate material from the original complaint by reference. If Plaintiff wishes to attach any
27 additional pages to the civil rights form, he shall maintain the same format as the form, i.e.,
28 answer only the questions asked in the "Exhaustion of Administrative Remedies" section without

1 including a narrative explanation of each grievance filed.

2 **Plaintiff's failure to file his amended complaint by the twenty-eight-day deadline or**
3 **to correct the aforementioned deficiencies outlined above will result in the dismissal of this**
4 **action without prejudice.**

5 2. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court
6 informed of any change of address and must comply with the Court's orders in a timely fashion.
7 Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes
8 while an action is pending must promptly file a notice of change of address specifying the new
9 address. *See* L.R. 3-11(a). The Court may dismiss without prejudice a complaint when: (1) mail
10 directed to the *pro se* party by the Court has been returned to the Court as not deliverable, and
11 (2) the Court fails to receive within sixty days of this return a written communication from the *pro*
12 *se* party indicating a current address. *See* L.R. 3-11(b).

13 3. The Clerk shall send Plaintiff a blank civil rights form along with a copy of this
14 Order.

15 IT IS SO ORDERED.

16 Dated: October 10, 2019

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18 YVONNE GONZALEZ ROGERS
19 United States District Judge
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