

1
2
3
4
5
6
7 **UNITED STATES DISTRICT COURT**
8 **WESTERN DISTRICT OF WASHINGTON**
9 **AT TACOMA**

9 SHANNON WESTBROOK,

10 Plaintiff,

11 v.

12 DR. STEVE HAMMOND, et al.,

13 Defendants.

NO. C10-5392 BHS/KLS

ORDER DENYING PLAINTIFF'S
MOTION TO AMEND COMPLAINT
AS PROPOSED, AND GRANTING
LEAVE TO FILE AMENDED
COMPLAINT

14 This civil rights action has been referred to United States Magistrate Judge Karen L.
15 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. On June 3, 2010,
16 Plaintiff filed a motion to proceed *in forma pauperis* and a proposed prisoner civil rights
17 complaint. Dkt. 1. On June 4, 2010, the Clerk of Court directed Plaintiff to provide service
18 copies and marshal forms for the service of his complaint. Dkt. 2. On June 14, 2010, Plaintiff
19 was granted leave to proceed *in forma pauperis* and his Complaint was docketed. Dkts. 3 and
20 4, respectively. On June 17, 2010, Plaintiff filed a motion to amend his complaint, with a
21 proposed amendment, service copies and summonses. Dkt. 5. As proposed, portions of the
22 amended complaint contain deficiencies preventing service. Accordingly, the court shall not
23 direct service of the amended complaint, but shall give Plaintiff an opportunity to submit an
24 amended complaint to cure the deficiencies.
25
26

1 Plaintiff also must allege facts showing how individually named defendants caused or
2 personally participated in causing the harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d
3 1350, 1355 (9th Cir. 1981). A defendant cannot be held liable under 42 U.S.C. § 1983 solely
4 on the basis of supervisory responsibility or position. *Monell v. New York City Dept. of Social*
5 *Services*, 436 U.S. 658, 694 n. 58 (1978). A theory of respondeat superior is not sufficient to
6 state a section 1983 claim. *Padway v. Palches*, 665 F.2d 965, 968 (9th Cir. 1982). To be liable
7 for causing the deprivation of a constitutional right, the particular defendant must commit an
8 affirmative act, or omit to perform an act, that he or she is legally required to do, and which
9 causes the plaintiff's deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). The
10 inquiry into causation must be individualized and focus on the duties and responsibilities of
11 each individual defendant whose acts or omissions are alleged to have caused a constitutional
12 deprivation. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988); *see also Rizzo v. Goode*, 423
13 U.S. 362, 370-71, 375-77 (1976).

14
15
16 In his proposed amended complaint, Plaintiff adds factual allegations regarding his
17 claim that he was denied medical care at the Stafford Creek Corrections Center (SCCC) in
18 violation of his Eighth Amendment rights. He adds several new defendants; among these,
19 Plaintiff purports to sue (1) Governor Christine Gregoire because she is in charge of the
20 supervision and discipline of all state employees; (2) Eldon Vail, Secretary of the Department
21 of Corrections (DOC), because he is in charge of the supervision and discipline of all
22 correctional and medical staff at SCCC; and (3) Pat Glebe, Superintendent of SCCC, because
23 he is in charge of the supervision and discipline of all SCCC correctional and medical staff.

24
25 Dkt. 5-2, pp. 1-2.
26

1 With regard to Governor Christine Gregoire, Secretary Vail and Superintendent Glebe,
2 the court finds that Plaintiff has failed to state a claim upon which relief may be granted
3 because he has named these individuals in their supervisory capacity only and has included no
4 factual allegations to support a claim that these individuals personally participated in the
5 alleged deprivation of his Eighth Amendment rights.
6

7 To state a claim under the Eighth Amendment, Plaintiff must include factual allegations
8 that a state actor acted with deliberate indifference to his serious medical needs. Deliberate
9 indifference to an inmate's serious medical needs violates the Eighth Amendment's
10 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104
11 (1976). Deliberate indifference includes denial, delay or intentional interference with a
12 prisoner's medical treatment. *Id.* at 104-5; see also *Broughton v. Cutter Labs.*, 622 F.2d 458,
13 459-60 (9th Cir. 1980). To succeed on a deliberate indifference claim, an inmate must
14 demonstrate that the prison official had a sufficiently culpable state of mind. *Farmer v.*
15 *Brennan*, 511 U.S. 825, 836 (1994). A determination of deliberate indifference involves an
16 examination of two elements: the seriousness of the prisoner's medical need and the nature of
17 the defendant's response to that need. *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.
18 1992).
19

20 First, the alleged deprivation must be, objectively, "sufficiently serious." *Farmer*, 511
21 U.S. at 834. A "serious medical need" exists if the failure to treat a prisoner's condition would
22 result in further significant injury or the unnecessary and wanton infliction of pain contrary to
23 contemporary standards of decency. *Helling v. McKinney*, 509 U.S. 25, 32-35 (1993);
24
25
26

1 McGuckin, 974 F.2d at 1059. Second, the prison official must be deliberately indifferent to the
2 risk of harm to the inmate. *Farmer*, 511 U.S. at 834.

3 An official is deliberately indifferent to a serious medical need if the official “knows of
4 and disregards an excessive risk to inmate health or safety.” *Id.* at 837. Deliberate
5 indifference requires more culpability than ordinary lack of due care for a prisoner’s health.
6 *Id.* at 835. In assessing whether the official acted with deliberate indifference, a court’s inquiry
7 must focus on what the prison official actually perceived, not what the official should have
8 known. See *Wallis v. Baldwin*, 70 F.3d 1074, 1077 (9th Cir. 1995). In other words an official
9 must (1) be actually aware of facts from which an inference could be drawn that a substantial
10 risk of harm exists, (2) actually draw the inference, but (3) nevertheless disregard the risk to
11 the inmate’s health. *Farmer*, 511 U.S. at 837-8.

12
13
14 Plaintiff must identify the individuals who have allegedly caused him harm, but he has
15 failed to do so as to Governor Gregoire, Secretary Vail and Superintendent Glebe.
16 Supervisory personnel are generally not liable under § 1983 for the actions of their employees
17 under a theory of respondeat superior and, therefore, when a named defendant holds a
18 supervisory position, the causal link between him and the claimed constitutional violation
19 must be specifically alleged. See *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir.1979); *Mosher*
20 *v. Saalfeld*, 589 F.2d 438, 441 (9th Cir.1978), cert. denied, 442 U.S. 941 (1979). To state a
21 claim for relief under section 1983 based on a theory of supervisory liability, Plaintiff must
22 allege some facts that would support a claim that supervisory defendants either: personally
23 participated in the alleged deprivation of constitutional rights; knew of the violations and failed
24 to act to prevent them; or promulgated or “implemented a policy so deficient that the policy
25
26

1 'itself is a repudiation of constitutional rights' and is 'the moving force of the constitutional
2 violation.'" *Hansen v. Black*, 885 F.2d 642, 646 (9th Cir.1989) (internal citations omitted);
3 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.1989).

4 Although federal pleading standards are broad, some facts must be alleged to support
5 claims under section 1983. *See Leatherman v. Tarrant County Narcotics Unit*, 507 U.S. 163
6 (1993). Plaintiff has not alleged any facts indicating that Governor Gregoire, Secretary Vail
7 and Superintendent Glebe personally participated in the alleged violations, knew of the
8 violations and failed to prevent them, or implemented a deficient policy. Therefore, Plaintiff
9 has failed to state any valid claims against Governor Gregoire, Secretary Vail and
10 Superintendent Glebe and dismissal of his claims against these individuals is appropriate.
11 Before dismissing these parties, however, the court shall grant Plaintiff leave to file an
12 amended complaint to either plead facts sufficient to support the conclusion that Governor
13 Gregoire, Secretary Vail and/or Superintendent Glebe participated in the deprivation of his
14 Constitutional rights or to file an amended complaint that does not include these individuals.

15 Plaintiff shall set forth his factual allegations in separately numbered paragraphs. The
16 amended complaint shall operate as a complete substitute for (rather than a mere supplement
17 to) the present complaint. The amended complaint must be legibly rewritten or retyped in its
18 entirety, it should be an original and not a copy, it may not incorporate any part of the original
19 complaint by reference, and it must be clearly labeled the "First Amended Complaint" and
20 must contain the same cause number as this case. Plaintiff is further directed to provide copies
21 of his First Amended Complaint and completed summonses containing the current address for
22
23
24
25
26

1 each named defendant. Plaintiff shall do so on or before **July 16, 2010**, or the Court will
2 recommend dismissal of the deficient portions of his complaint.

3 Accordingly, it is **ORDERED** that Plaintiff's motion to amend his complaint as
4 proposed (Dkt. 5-2) is **DENIED**. The Clerk shall send a copy of this Order and a copy of the
5 General Order to Plaintiff.
6

7 Dated this 29th day of June, 2010.

8 
9 Karen L. Strombom
10 Karen L. Strombom
11 United States Magistrate Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26