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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

EDWARD BRIDGEMAN,  
Plaintiff,  
v.  
DEPARTMENT OF CALIFORNIA  
CORRECTION, et al.,  
Defendants.

No. 2:15-cv-2579 JAM AC P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights complaint filed pursuant to 42 U.S.C. § 1983, together with a request for leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. In Forma Pauperis Application

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a).<sup>1</sup> Accordingly, his request to proceed in forma pauperis will be granted.

Nevertheless, plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will

<sup>1</sup> The undersigned previously issued findings and recommendations recommending dismissal of this action without prejudice due to plaintiff’s failure to submit a fully completed in forma pauperis application or pay the appropriate filing fee. See ECF No. 7. These findings and recommendations will be vacated pursuant to this order.

1 direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account  
2 and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly  
3 payments of twenty percent of the preceding month's income credited to plaintiff's prison trust  
4 account. These payments will be forwarded by the appropriate agency to the Clerk of the Court  
5 each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28  
6 U.S.C. § 1915(b)(2).

## 7 II. Legal Standards for Screening Plaintiff's Complaint

8 Under the Prison Litigation Reform Act (PLRA), this court is required to screen  
9 complaints brought by prisoners seeking relief against a governmental entity or officer or  
10 employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint  
11 or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," fail to  
12 state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is  
13 immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). A claim is legally frivolous when it lacks  
14 an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989);  
15 Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984).

16 Rule 8 of the Federal Rules of Civil Procedure "requires only 'a short and plain statement  
17 of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair  
18 notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v.  
19 Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
20 "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it  
21 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Ashcroft v.  
22 Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly at 555). To survive dismissal for failure to  
23 state a claim, "a complaint must contain sufficient factual matter, accepted as true, to "state a  
24 claim to relief that is plausible on its face.'" Iqbal at 678 (quoting Twombly at 570). "A claim  
25 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the  
26 reasonable inference that the defendant is liable for the misconduct alleged. The plausibility  
27 standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility  
28 that a defendant has acted unlawfully." Id. (citing Twombly at 556). "Where a complaint pleads

1 facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between  
2 possibility and plausibility of “entitlement to relief.”’” Id. (quoting Twombly at 557).

3 A pro se litigant is entitled to notice of the deficiencies in his complaint and an  
4 opportunity to amend, unless the complaint’s deficiencies cannot be cured by amendment. See  
5 Noll v. Carlson, 809 F.2d 1446, 1448 (9th Cir. 1987).

### 6 III. Screening of Plaintiff’s Complaint

7 Pursuant to the instant complaint, plaintiff seeks “219.5 billion dollers [sic]” in damages  
8 based on his claim that unidentified medical personnel failed to properly treat his cancer, leaving  
9 plaintiff with “a hole on the lower part of [his] tail bone” that causes constant pain and impairs  
10 plaintiff’s ability to walk and stand. ECF No. 1 at 3. The only defendant named in this action is  
11 the California Department of Corrections and Rehabilitation (CDCR), and its former Secretary,  
12 Jeffrey Beard (whom plaintiff mistakenly references as “James Beard”).

#### 13 A. No Cognizable Defendant

14 Neither CDCR nor the state of California is a proper defendant. See Atascadero State  
15 Hosp. v. Scanlon, 473 U.S. 234, 237-38 (1985) (Eleventh Amendment bars suits against states in  
16 federal court); Wolfe v. Strankman, 392 F.3d 358, 364 (9th Cir. 2004) (state agencies).

17 Moreover, in the absence of allegations that former CDCR Secretary Beard was  
18 personally involved in the alleged deprivation of plaintiff’s constitutional rights, plaintiff fails to  
19 state a cognizable claim against him. “A supervisor may be liable [only] if there exists either (1)  
20 his or her personal involvement in the constitutional deprivation, or (2) a sufficient causal  
21 connection between the supervisor’s wrongful conduct and the constitutional violation.” Hansen  
22 v. Black, 885 F.2d 642, 646 (9th Cir. 1989) (citation omitted). “There is no respondeat superior  
23 liability under section 1983.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.1989).

24 Significantly, plaintiff fails to identify any specific individual (e.g., a CDCR physician or  
25 other medical provider) who was allegedly responsible for the challenged decisions concerning  
26 plaintiff’s medical care. To state a cognizable claim under Section 1983, plaintiff must allege an  
27 actual connection or link between the challenged conduct of a specific defendant and the alleged  
28 deprivation of plaintiff’s constitutional rights. See Monell v. Department of Social Services, 436

1 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). “The inquiry into causation must be  
2 individualized and focus on the duties and responsibilities of each individual defendant whose  
3 acts or omissions are alleged to have caused a constitutional deprivation.” Leer v. Murphy, 844  
4 F.2d 628, 633 (9th Cir.1988) (citations omitted). There can be no liability under Section 1983  
5 unless there is some affirmative link or connection between a defendant’s actions and the claimed  
6 deprivation. Id.; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d  
7 740, 743 (9th Cir. 1978). Vague and conclusory allegations of official participation in civil rights  
8 violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

9 B. No Cognizable Claim

10 More specifically, to state a cognizable claim for unconstitutional medical care, plaintiff  
11 must allege that a specific defendant engaged in “acts or omissions [that were] sufficiently  
12 harmful to evidence deliberate indifference to [plaintiff’s] serious medical needs.” Estelle v.  
13 Gamble, 429 U.S. 97, 106 (1976). Plaintiff must allege both that his medical needs were  
14 objectively serious,<sup>2</sup> and that defendants possessed a sufficiently culpable state of mind. Wilson  
15 v. Seiter, 501 U.S. 294, 299 (1991); McKinney v. Anderson, 959 F.2d 853, 854 (9th Cir. 1992)  
16 (on remand). The requisite state of mind is “deliberate indifference.” Hudson v. McMillian, 503  
17 U.S. 1, 5 (1992). In Farmer v. Brennan, 511 U.S. 825 (1994), the Supreme Court established a  
18 very demanding standard for “deliberate indifference.” Negligence is insufficient. Id. at 835.  
19 Even civil recklessness (failure to act in the face of an obvious and unjustifiably high risk of  
20 harm) is insufficient to establish an Eighth Amendment violation. Id. at 836-37. Rather, to state  
21 a claim for deliberate indifference to serious medical needs, a prisoner must allege that a prison  
22 official “kn[ew] of and disregard [ed] an excessive risk to inmate health or safety; the official

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24 <sup>2</sup> Serious medical needs include conditions in which a failure to treat could result in significant  
25 injury to plaintiff. “The existence of an injury that a reasonable doctor or patient would find  
26 important and worthy of comment or treatment; the presence of a medical condition that  
27 significantly affects an individual’s daily activities; or the existence of chronic and substantial  
28 pain are examples of indications that a prisoner has a ‘serious’ need for medical treatment.”  
McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992) (citing Wood v. Housewright, 900  
F.2d 1332, 1337-41 (9th Cir. 1990) (citing cases)), and Hunt v. Dental Department, 865 F.2d 198,  
200-01 (9th Cir. 1989)), overruled on other grounds, WMX Technologies v. Miller, 104 F.3d  
1133 (9th Cir. 1997) (en banc).

1 must both be aware of the facts from which the inference could be drawn that a substantial risk of  
2 serious harm exists, and he must also draw the inference.” Id. at 837. Stated differently:

3 In the Ninth Circuit, the test for deliberate indifference consists of  
4 two parts. First, the plaintiff must show a serious medical need by  
5 demonstrating that failure to treat a prisoner’s condition could result  
6 in further significant injury or the unnecessary and wanton  
7 infliction of pain. Second, the plaintiff must show the defendant’s  
8 response to the need was deliberately indifferent. This second  
9 prong . . . is satisfied by showing (a) a purposeful act or failure to  
10 respond to a prisoner’s pain or possible medical need and (b) harm  
11 caused by the indifference.

12 Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal citations, punctuation and quotation  
13 marks omitted); accord, Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Lemire v.  
14 CDCR, 726 F.3d 1062, 1081 (9th Cir. 2013).

15 The allegations of the instant complaint fail to meet these standards. While it appears that  
16 plaintiff has serious medical needs associated with cancer, he does not identify specific problems  
17 associated with his medical care, nor any medical provider or other individual who “knew of and  
18 disregarded” a substantial risk of serious harm to plaintiff.

### 19 C. Dismissal of Complaint and Leave to File an Amended Complaint

20 For the reasons set forth above, the court finds that the complaint does not contain “a short  
21 and plain statement of the claim showing that [plaintiff] is entitled to relief,” as required by  
22 Federal Rule of Civil Procedure 8(a)(2). Although the Federal Rules adopt a flexible pleading  
23 standard, a complaint must allege sufficient facts supporting the elements of plaintiff’s legal  
24 claims against specific defendants, thus giving fair notice to the defendants. Jones v. Community  
25 Redevelopment Agency, 733 F.2d 646, 649 (9th Cir. 1984). The complaint must state in specific  
26 terms how each defendant allegedly violated plaintiff’s constitutional rights. Rizzo, *supra*, 423  
27 U.S. at 371. Because plaintiff has failed to comply with these requirements, his complaint must  
28 be dismissed.

29 However, plaintiff will be granted leave to file an amended complaint. Plaintiff is  
30 informed that an amended complaint supersedes the original complaint and must therefore be  
31 complete in itself without reference to the original complaint. See Local Rule 220; Loux v. Rhay,  
32 375 F.2d 55, 57 (9th Cir. 1967). An amended complaint must clearly identify each claim and the

1 challenged conduct of each defendant.

2 IV. Conclusion

3 Accordingly, for the foregoing reasons, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed in this action on March 15, 2016, ECF No. 7,  
5 are vacated.

6 2. Plaintiff's request for leave to proceed in forma pauperis, ECF No. 8, is granted.

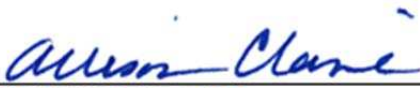
7 3. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
8 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §  
9 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
10 Director of the California Department of Corrections and Rehabilitation filed concurrently  
11 herewith.

12 4. Plaintiff's complaint, ECF No. 1, is dismissed.

13 5. Plaintiff shall, within thirty days after service of this order, file an amended complaint  
14 that complies with the requirements set forth herein, as well as the Federal Rules of Civil  
15 Procedure and Local Rules. The amended complaint must bear the docket number assigned this  
16 case and be labeled "Amended Complaint."

17 6. Failure to timely file an amended complaint in accordance with this order will result in  
18 the dismissal of this action without prejudice.

19 DATED: May 3, 2016

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21 ALLISON CLAIRE  
22 UNITED STATES MAGISTRATE JUDGE  
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