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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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| MICHAEL WILSON, |) | No. CV 16-09449-DOC (DFM) |
| Plaintiff, |) | |
| v. |) | MEMORANDUM AND ORDER |
| J. GASTELLO et al., |) | DISMISSING COMPLAINT WITH |
| Defendants. |) | LEAVE TO AMEND |

I.
BACKGROUND

On November 15, 2016, Michael Wilson (“Plaintiff”), a prisoner at California Men’s Colony in San Luis Obispo County (“CMC”), filed an “Affidavit/Declaration” in the United States District Court for the Northern District of California. Dkt. 1 (“Affidavit”). The Clerk of the Court provided Plaintiff with a blank Complaint by a Prisoner Form and a blank In Forma Pauperis Application. Dkt. 2, 3. On December 1, Plaintiff filed this pro se civil rights action pursuant to 42 U.S.C. § 1983 and moved for leave to proceed in forma pauperis. Dkt. 5 (“Complaint”), 6. About three weeks later, the action

1 was transferred to the Central District of California, because the Complaint
2 described events that occurred at CMC. See Dkt. 9. On January 5, 2017, this
3 Court granted Plaintiff's application to proceed in forma pauperis. Dkt. 12. On
4 March 6, Plaintiff moved to amend the Complaint, adding additional
5 allegations. Dkt. 14 ("Supplement"). The Court interpreted Plaintiff's motion
6 as a request to supplement the Complaint (Dkt. 17); the Court considers the
7 Complaint and Supplement together.

8 In accordance with 28 U.S.C. §§ 1915(e)(2) and 1915A, the Court must
9 screen the Complaint to determine whether the action is frivolous or malicious;
10 fails to state a claim on which relief might be granted; or seeks monetary relief
11 against a defendant who is immune from such relief.

12 II.

13 DEFENDANTS

14 Construing Plaintiff's pleadings generously, Plaintiff brings the
15 Complaint against at least 13 defendants: (1) J. Gastello, CMC Warden; (2)
16 Scott Kernan, Secretary of Corrections; (3) L. Sprague, Chief Medical Officer
17 at CMC; (4) Ojuri Adebambo, M.D.; (5) Camilo (referred to by Plaintiff as
18 "Castillo") Guiang, primary care provider; (6) Mrs. Romans, Educational
19 Principle; (7) Ms. Gomez, Vice Principal; (8) Ms. Knapp, Teacher; (9); M.
20 Kon, Compliance/Appeals Coordinator; (10) K. Lino, Custody Appeals
21 Coordinator; (11) R. Ochoa, Custody Appeals Analyst; (12) K. Cox, ACA
22 Coordinator; and (13) S. Aguilera, primary care provider. Complaint at 2;
23 Supplement at 2. Plaintiff may also seek to bring claims against (14) Ms.
24 Mayton, Testing Coordinator; (15) Dr. Chaffee, optometrist; (16) Esther
25 Fernandez, Nurse; (17) Benjamin Allen, Nurse; and (18) Brad T. Barcklay,
26 "Psy. D." Complaint at 7; Supplement at 5-6, 8. Plaintiff does not state
27 whether he brings his claims against the defendants in an official or individual
28 capacity, or both. The Court therefore assumes that Plaintiff asserts his claims

1 against the defendants in their individual capacity only.

2 **III.**

3 **SUMMARY OF ALLEGATIONS**

4 Plaintiff is a “victim of an Organized Crime Ring and is unwilling to be
5 . . . silenced . . . [by] criminals posturing as Doctors, Nurses, Surgeons,
6 Appeals Coordinators.” Complaint at 4. Plaintiff has “literally been tortured
7 for over a decade.” Supplement at 4. “[O]fficials, doctors, nurses, wardens,
8 [and] associate wardens are all . . . colluding together to deny care . . . Plaintiff
9 has ‘grounds’ of these officials perpetrating fraud, altering medical records,
10 selling/peddling junk prescription glasses, old lenses, defective frames and
11 creating all these medical issues by feeding prisoners . . . food without any
12 nutritional value creating diabetes, high cholesterol, heart attacks, strokes.” Id.
13 CMC “medical staff” refuse referrals if prisoners do not volunteer to take
14 experimental drugs. Id.

15 Plaintiff was left with a scar on his colon after a colonoscopy procedure
16 at CMC. Complaint at 4. Gastello signed off, Dr. Guiang insisted on, and Dr.
17 Adebambo performed the procedure. Id. at 4, 6. On November 8, 2014 at
18 10:00 a.m., Nurse Fernandez, Nurse Allen, and Dr. Adebambo “stated a new
19 procedure would be done where air is blown in the colon,” placed Plaintiff in a
20 fetal position on a table, and pulled his pants down around his buttocks.
21 Supplement at 6. The colonoscopy left Plaintiff with constant bloating,
22 inability to pass gas, defecation six times a day, hemorrhoids, diverticulosis,
23 weight loss, and irritable bowel syndrome. Complaint at 5-6. Sprague refuses
24 to let Plaintiff see a specialist. Id. at 5; Supplement at 7. Plaintiff always runs
25 out of toilet paper, but “medical” refuses to issue more and Plaintiff has to pay
26 for his toilet paper supplies. Supplement at 6. Plaintiff was granted a high fiber
27 diet, but was instead given fiber tablets. Complaint at 6; Supplement at 4.

28 Plaintiff was “hit on the side line of a football game,” which flattened a

1 curve in his spine. Complaint at 5. He also has a large goiter growing on his
2 sternum, which impedes his breathing. Id. “CMC” claims that x-ray results are
3 negative, yet other x-rays show a “possible calcified Lymph Node” and that
4 part of Plaintiff’s rib cage is missing. Id. Plaintiff’s x-ray results were
5 “fraudulent.” Id. at 4. Plaintiff was scheduled to have a large calcium stone
6 removed from his salivary gland, but the surgery has not yet occurred. Id. at 5.
7 Plaintiff suffers from severe degenerative disc disease, arthritis, and constant
8 pain. Id. at 3, 5.

9 Dr. Chaffee gave Plaintiff “defective, old lenses,” despite knowing that
10 Plaintiff has glaucoma and chronic dry eye. Supplement at 5. Dr. Chaffee has
11 refused to replace these lenses or renew Plaintiff’s glaucoma medication.¹ Id.

12 “Medical staff” hides Plaintiff’s medical file in “numerous windows” on
13 the computer. Id. at 7.

14 Plaintiff’s saliva is white with bubbles, clogging his throat, and he was
15 diagnosed with “seratia marcesin.” Id. Plaintiff asked Dr. Guiang for a saliva
16 test, but Dr. Guiang said that Sprague had not authorized it. Id. “CMC”
17 refused follow-up. Id. Plaintiff asked for his lungs to be checked due to
18 breathing problems; “test[s] were performed,” but Dr. Guiang and Sprague
19 “embellished” the results. Id.

20 Sprague acted with deliberate indifference to Plaintiff’s injuries. Id. at 5.
21 Kernan is generally responsible for Plaintiff’s custody and care. Id. at 4.
22 Sprague, Kon, Lino, Ochoa, Cox, Dr. Aguilera, and Dr. Guiang are part of a
23

24 ¹ Plaintiff attaches to the Affidavit an April 2011 memorandum by the
25 California Department of Corrections and Rehabilitation, stating (1) Plaintiff
26 wears a prosthetic left eye, (2) a doctor treated Plaintiff for glaucoma for four
27 years before realizing that Plaintiff in fact had a cataract, and (3) Dr. Chaffee
28 referred Plaintiff to a retinal specialist, who prescribed artificial tear drops.
Dkt. 1 at 15-16.

1 Reasonable Accommodation Panel “involved in the deprivation of medical
2 care.” Supplement at 2. Gastello and Kernan have “judicial notice” of “failure
3 to provide medical care treatment.” Complaint at 3.

4 CMC is in violation of the Health Insurance Portability and
5 Accountability Act (“HIPAA”), because Barcklay was given unauthorized
6 access to Plaintiff’s medical information.² Supplement at 8. As a result,
7 Plaintiff was denied parole. Id. at 9.

8 Dr. Guiang deliberately did not fill out an entire medical form in order
9 to defraud Plaintiff out of his “ADA benefits.” Id.

10 Romans has defrauded “whoever funds the education department” by
11 claiming that CMC cannot find educational information in Plaintiff’s file,
12 despite his participation in CMC education since 1994. Complaint at 7. This
13 “scam” “fill[s] in seats” with “certain ethnic groups,” specifically Mexican
14 inmates. Id. Knapp is a union representative involved in this fraud, giving
15 Mexican inmates GEDs while denying access to other ethnic groups. Id.
16 Mayton also “pass[es] these Mexicans” while keeping other inmates “from
17 taking GED.” Id. Gomez is “rude and unprofessional” and also involved in
18 the fraud. Id.

19 Plaintiff alleges cruel and unusual punishment, due process violations,
20 [and] [HIPAA]” violations. Id. at 4. Plaintiff asks the Court to make CMC
21 agree to a plan for his medical care and compensate him financially for “scar
22 colonoscopy . . . , cervical injuries, [and] respi[ra]tory issues.” Id. at 3.

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27 ² Plaintiff does not name CMC as a defendant. The Court therefore
28 interprets Plaintiff’s Complaint as bringing a HIPAA claim against Barcklay.

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2 IV.

3 STANDARD OF REVIEW

4 The Court's screening of the Complaint under the foregoing statutes is
5 governed by the following standards: A complaint may be dismissed for failure
6 to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2)
7 insufficient facts under a cognizable legal theory. Balistreri v. Pacifica Police
8 Dep't, 901 F.2d 696, 699 (9th Cir. 1990). In determining whether the
9 complaint states a claim on which relief may be granted, its allegations of
10 material fact must be taken as true and construed in the light most favorable to
11 Plaintiff. Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1989). Since
12 Plaintiff is appearing pro se, the Court must construe the allegations of the
13 complaint liberally and afford Plaintiff the benefit of any doubt. Karim-Panahi
14 v. Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). However, "the
15 liberal pleading standard . . . applies only to a plaintiff's factual allegations."
16 Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989). "[A] liberal interpretation
17 of a civil rights complaint may not supply essential elements of the claim that
18 were not initially pled." Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251,
19 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268
20 (9th Cir. 1982)). A "plaintiff's obligation to provide the 'grounds' of his
21 'entitlement to relief' requires more than labels and conclusions, and a
22 formulaic recitation of the elements of a cause of action will not do. Factual
23 allegations must be enough to raise a right to relief above the speculative level,
24 on the assumption that all the allegations in the complaint are true (even if
25 doubtful in fact)." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
26 (citations omitted); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
27 (holding that to avoid dismissal for failure to state a claim, "a complaint must
28 contain sufficient factual matter, accepted as true, to 'state a claim to relief that

1 is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads
2 factual content that allows the court to draw the reasonable inference that the
3 defendant is liable for the misconduct alleged.” (citation omitted)).

4 If the Court finds that a complaint should be dismissed for failure to state
5 a claim, the Court has discretion to dismiss with or without leave to amend.
6 Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). The Court
7 should grant leave to amend if it appears possible that the defects in the
8 complaint could be corrected, especially if a plaintiff is pro se. Id. at 1130-31;
9 see also Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that
10 “[a] pro se litigant must be given leave to amend his or her complaint, and
11 some notice of its deficiencies, unless it is absolutely clear that the deficiencies
12 of the complaint could not be cured by amendment”). However, if, after
13 careful consideration, it is clear that a complaint cannot be cured by
14 amendment, the Court may dismiss without leave to amend. Cato, 70 F.3d at
15 1105-06.

16 V.

17 DISCUSSION

18 A. Plaintiff’s Failure to State Cognizable Legal Theories and Sufficient 19 Facts

20 As an initial matter, Plaintiff’s accusations against “CMC,” “medical
21 staff,” “nurses,” or other groups of individuals are not specific enough to
22 permit the Court to evaluate Plaintiff’s claims. Furthermore, Plaintiff’s
23 Complaint is almost entirely conclusory and bereft of dates, supporting facts,
24 or explanations. Plaintiff accuses certain defendants of being part of a
25 “Reasonable Accommodation Panel,” but does not explain what role this
26 panel played in the alleged deprivations. See Supplement at 2. Plaintiff accuses
27 Dr. Guiang of deliberately partially filling out a medical form to “defraud”
28 Plaintiff of his ADA benefits, but does not state when this occurred, what form

1 this was, why he believes Dr. Guiang acted deliberately, and how a partially-
2 filled out form resulted the deprivation of benefits. See id. at 9. Plaintiff does
3 not explain what he means when he says that Dr. Guiang and Sprague
4 “embellished” results of lung tests, or when these tests occurred. See id. at 7.
5 Plaintiff’s statement that Romans, Knapp, Mayton, and Gomez favor Mexican
6 inmates and are defrauding the government is entirely conclusory, with no
7 supporting facts or dates. See Complaint at 7. As for Plaintiff’s HIPAA claim
8 against Barcklay, HIPPA provides no private right of action. Seaton v.
9 Mayberg, 610 F.3d 530, 533 (9th Cir. 2010).

10 Plaintiff also fails to allege personal involvement by most of the
11 defendants in the alleged constitutional violations. In order to state a § 1983
12 claim, Plaintiff must allege that particular defendants personally participated in
13 the alleged rights deprivations. See Jones v. Williams, 297 F.3d 930, 934 (9th
14 Cir. 2002). Plaintiff makes no allegations at all against Kon, Lino, Ochoa,
15 Cox, and Dr. Aguilera, apart from their membership in the Reasonable
16 Accommodation Panel. Plaintiff also fails to state sufficient facts to support his
17 legal theories against Gastello and Kernan. Supervisory personnel generally
18 are not liable under 42 U.S.C. § 1983 on any theory of respondeat superior or
19 vicarious liability, in the absence of a state law imposing such liability. See
20 Redman v. Cty. of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991). A plaintiff
21 must allege either (1) the supervisor’s personal involvement in the
22 constitutional deprivation, or (2) a sufficient causal connection between the
23 supervisor’s wrongful conduct and the constitutional violation. Starr v. Baca,
24 652 F.3d 1202, 1207 (9th Cir. 2011). Here, Plaintiff has done neither.
25 Plaintiff’s only allegation against Gastello is that he “signed off” on Plaintiff’s
26 colonoscopy and has “judicial notice” of the “failure to provide medical care.”
27 See Complaint at 3-4. Plaintiff’s only allegation against Kernan is that he is
28 “generally responsible” for Plaintiff’s care and has “judicial notice” of the

1 alleged deprivations. See Supplement at 3-4. In these ways, Plaintiff fails to
2 state claims on which relief might be granted, making dismissal appropriate.

3 **B. Plaintiff's Deficient Deliberate Indifference Claim**

4 To establish an Eighth Amendment claim that prison authorities
5 provided inadequate medical care, a prisoner must allege acts or omissions
6 sufficiently harmful to evidence deliberate indifference to serious medical
7 needs. Estelle v. Gamble, 429 U.S. 97, 106 (1976). Deliberate indifference may
8 be manifested by the intentional denial, delay, or interference with a plaintiff's
9 medical care, or by the manner in which the medical care was provided. Id. at
10 104-05. A plaintiff must demonstrate confinement under conditions posing a
11 risk of "objectively, sufficiently serious" harm and that the officials had a
12 "sufficiently culpable state of mind" in denying the proper medical care.
13 Clement v. Gomez, 298 F.3d 898, 904 (9th Cir. 2002) (quoting Wallis v.
14 Baldwin, 70 F.3d 1074, 1076 (9th Cir.1995)). A defendant "both be aware of
15 facts from which the inference could be drawn that a substantial risk of serious
16 harm exists, and he must also draw the inference." Farmer v. Brennan, 511
17 U.S. 825, 837 (1994). An inadvertent failure to provide adequate medical care,
18 mere negligence or medical malpractice, a mere delay in medical care (without
19 more), or a difference of opinion over proper medical treatment, are all
20 insufficient to constitute an Eighth Amendment violation. Estelle, 429 U.S. at
21 105-07; Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Even gross
22 negligence is insufficient to establish deliberate indifference to serious medical
23 needs. Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

24 Plaintiff fails to state an Eighth Amendment claim against Sprague, Dr.
25 Adebambo, Dr. Guiang, Dr. Chaffee, Nurse Fernandez, or Nurse Allen.
26 Plaintiff alleges no facts suggesting a sufficiently culpable state of mind when
27 (1) Dr. Guiang "insisted" on the colonoscopy and refused to give Plaintiff a
28 saliva test without supervisory permission; (2) Sprague refused to let Plaintiff

1 see a “specialist” (setting aside that Plaintiff gives no specifics as to when this
2 occurred or what Sprague said or did); (3) Dr. Adebambo, Nurse Fernandez,
3 and Nurse Allen performed the colonoscopy with poor results; and (4) Dr.
4 Chaffee gave Plaintiff bad lenses and failed to replace them or renew Plaintiff’s
5 glaucoma medication. Furthermore, Plaintiff alleges no facts suggesting that
6 these acts reflect anything more than, at most, negligence or malpractice.
7 Plaintiff has not stated an Eighth Amendment claim on which relief may be
8 granted, even taking his allegations as true.

9 **VI.**

10 **CONCLUSION**

11 Because of the pleading deficiencies identified above, the Complaint is
12 subject to dismissal. Because it appears to the Court that some of the
13 Complaint’s deficiencies are capable of being cured by amendment, it is
14 dismissed with leave to amend. See Lopez, 203 F.3d at 1130-31 (holding that
15 pro se litigant must be given leave to amend complaint unless it is absolutely
16 clear that deficiencies cannot be cured by amendment). If Plaintiff still desires
17 to pursue his claims against Defendants, he shall file a First Amended
18 Complaint within thirty-five (35) days of the date of this Order remedying the
19 deficiencies discussed above. Plaintiff’s First Amended Complaint should bear
20 the docket number assigned in this case; be labeled “First Amended
21 Complaint”; and be complete in and of itself without reference to the original
22 Complaint or any other pleading, attachment or document. The Clerk is
23 directed to send Plaintiff a blank Central District civil rights complaint form,
24 which Plaintiff is strongly encouraged to utilize.

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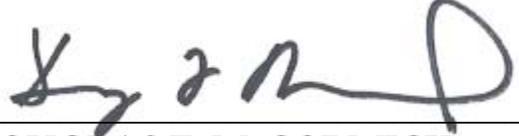
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1 **Plaintiff is admonished that, if he fails to timely file a First Amended**
2 **Complaint, the Court will recommend that this action be dismissed with**
3 **prejudice for failure to diligently prosecute.**

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5 Dated: April 10, 2017

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8 DOUGLAS F. McCORMICK
9 United States Magistrate Judge

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