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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

SHANE MATTHEW MULVIHILL,	)	No. CV17-00200-MWF (AS)
	)	
Plaintiff,	)	<b>ORDER DISMISSING FIRST AMENDED</b>
v.	)	
	)	<b>COMPLAINT WITH LEAVE TO AMEND</b>
LOS ANGELES COUNTY SHERIFF'S	)	
DEPARTMENT,	)	
Defendant.	)	
	)	

I.  
INTRODUCTION

On December 27, 2016, Plaintiff Shane Matthew Mulvihill ("Plaintiff"), a prisoner at the California Institution for Men ("CIM") in Chino, California, filed a complaint ("the original Complaint") pursuant to 42 U.S.C. § 1983, (Docket Entry No. 1), naming the Los Angeles County Sheriff's Department ("Defendant") as the sole defendant. (See Docket Entry No. 1 at 1). On February 14, 2017, the Court dismissed the original Complaint with leave to amend. (Docket Entry No. 7). On March 10, 2017, Plaintiff filed a First Amended Complaint ("FAC"). (Docket Entry No. 9). Plaintiff alleges

1 that Defendant failed to provide medical treatment to Plaintiff  
2 causing Plaintiff harm. (FAC at 5). Plaintiff seeks monetary  
3 relief. (Id. at 6).

4  
5 The Court has screened the FAC as prescribed by 28 U.S.C. §  
6 1915A(a) and 28 U.S.C. § 1915(e)(2)(B). For the reasons set forth  
7 below, the Court DISMISSES the First Amended Complaint WITH LEAVE TO  
8 AMEND.

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10 **II.**

11 **ALLEGATIONS OF THE FIRST AMENDED COMPLAINT**

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13 Plaintiff alleges that while housed in the Los Angeles County  
14 Men's Central Jail, he was denied "proper medical/mental health  
15 treatment," which caused Plaintiff "further ongoing pain and  
16 suffering while incarcerated." (FAC at 5). Specifically, Plaintiff  
17 alleges that "[t]he Facility in Question and deputies mentioned were  
18 aware of [his] medical condition and disability that was accessible  
19 through [his] records." When Plaintiff asked for the names of  
20 deputies involved in the alleged conduct, Plaintiff's request was  
21 denied. (Id.). When Plaintiff was subsequently transferred to CIM,  
22 Defendant did not send Plaintiff's medical records, which caused his  
23 condition to deteriorate. (Id.).

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1 Pardus, 551 U.S. 89, 93 (2007) (per curiam) (quoting Twombly, 550  
2 U.S. at 555).

3  
4 In considering whether to dismiss a complaint, a court is  
5 generally limited to the pleadings and must construe all "factual  
6 allegations set forth in the complaint . . . as true and . . . in the  
7 light most favorable" to the plaintiff. Lee v. City of L.A.,  
8 250 F.3d 668, 679 (9th Cir. 2001). Moreover, pro se pleadings are  
9 "to be liberally construed" and held to a less stringent standard  
10 than those drafted by a lawyer. Erickson, 551 U.S. at 94; see also  
11 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) ("Iqbal  
12 incorporated the Twombly pleading standard and Twombly did not alter  
13 courts' treatment of pro se filings; accordingly, we continue to  
14 construe pro se filings liberally when evaluating them under  
15 Iqbal"). Nevertheless, dismissal for failure to state a claim can  
16 be warranted based on either the lack of a cognizable legal theory or  
17 the absence of factual support for a cognizable legal theory.  
18 Mendondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir.  
19 2008). A complaint may also be dismissed for failure to state a  
20 claim if it discloses some fact or complete defense that will  
21 necessarily defeat the claim. Franklin v. Murphy, 745 F.2d 1221,  
22 1228-29 (9th Cir. 1984).

#### 23 24 IV.

#### 25 DISCUSSION

26  
27 The FAC contains deficiencies warranting dismissal, although  
28 leave to amend will be granted. See 28 U.S.C. § 1915A(b)(1).

1 **A. The FAC Fails To Satisfy Federal Rule Of Civil Procedure 8**

2  
3 As currently pled, Plaintiff's allegations do not provide  
4 sufficient detail to assert a § 1983 claim in accordance with Federal  
5 Rule of Civil Procedure 8. Rule 8 requires, in relevant, part that a  
6 complaint contain "'a short and plain statement of the claim showing  
7 that the pleader is entitled to relief,' in order to 'give the  
8 defendant fair notice of what the . . . claim is and the grounds upon  
9 which it rests.'" Twombly, 550 U.S. at 555 (quoting Fed. R. Civ. P.  
10 8(a)). Rule 8 therefore requires more than a blanket assertion of  
11 entitlement to relief; without some factual allegations in the  
12 complaint it is hard to see how a claimant could satisfy the  
13 requirement of providing not only fair notice of the nature of the  
14 claim, but also grounds on which the claim rests. Fed. R. Civ. P.  
15 8(a)(2); Twombly, 550 U.S. at 555.

16  
17 Here, the FAC does not comply with Rule 8 because it contains  
18 conclusory allegations. In fact, the allegations contained in the  
19 FAC are less specific than those provided in Plaintiff's original  
20 Complaint. (See Docket Entry No. 1). Plaintiff generally alleges  
21 that Defendant failed to provide "mental health/medical treatment"  
22 for his disability, which deputies were aware of, and Plaintiff's  
23 inability to obtain treatment caused "ongoing pain and suffering."  
24 (FAC at 5). These allegations do not specifically state the facts  
25 surrounding Plaintiff's medical condition and alleged denial of  
26 treatment; nor do they identify the individual deputies and staff  
27 involved in the alleged conduct. A complaint is subject to dismissal  
28 for failure to state a claim if "one cannot determine from the

1 complaint who is being sued, for what relief, and on what theory."  
2 McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996); see also  
3 Chevalier v. Ray and Joan Kroc Corps. Cmty. Ctr., No. C-11-4891 SBA,  
4 2012 WL 2088819, \*2 (N.D. Cal. June 8, 2012) (complaint that did not  
5 "identify which wrongs were committed by which Defendant" violated  
6 Rule 8).

7  
8 Consequently, the FAC does not show there are plausible grounds  
9 for relief, nor does it provide enough facts for the Defendant to  
10 properly respond to the FAC. Cafasso, U.S. ex rel. v. Gen. Dynamics  
11 C4 Sys., Inc., 637 F.3d 1047, 1059 (9th Cir. 2011). Plaintiff fails  
12 to identify what individuals carried out the activities discussed in  
13 the FAC, and Defendant cannot adequately respond to the Complaint  
14 without this basic information.<sup>1</sup>

15  
16 Accordingly, the FAC is dismissed with leave to amend in order  
17 to provide more facts to satisfy Rule 8.

18  
19 **B. Plaintiff Cannot Reference A Dismissed Complaint In An Amended**  
20 **Complaint**

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22 When a Plaintiff files an amended complaint, the amended  
23 complaint supersedes the original complaint. Rhodes v. Robinson, 621

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25 <sup>1</sup> Plaintiff is also advised that if he is unaware of the  
26 identities of any Doe Defendant(s), he should state this fact in his  
27 Second Amended Complaint and refer to unnamed defendants as "Doe  
28 Defendant," identifying each defendant by number (e.g. "Doe  
Defendant 1," "Doe Defendant 2," etc.). See Wakefield v. Thompson,  
177 F.3d 1160, 1163 (9th Cir. 1999) (use of "Doe" Defendants is  
permissible in certain circumstances).

1 F.3d 1002, 1005 (9th Cir. 2010); Ferdik v. Bonzelet, 963 F.2d 1258,  
2 1262 (9th Cir. 1992). After amendment, the Court will treat any  
3 prior complaint as nonexistent. Rhodes, 621 F.2d at 1005. Any  
4 amended complaint "shall not refer to the prior, superseded  
5 [complaint]." L.R. 15-2  
6

7 Plaintiff not only referenced the original Complaint in the FAC,  
8 but he also filed a factually less detailed FAC than the original  
9 Complaint. It is apparent that Plaintiff believes that the  
10 allegations made in the original Complaint need not be re-stated in  
11 the FAC. This is not the case. Plaintiff must allege all facts  
12 surrounding the alleged conduct in any amended complaint going  
13 forward. The Court explicitly ordered Plaintiff that any amended  
14 complaint "shall be complete in itself without reference to the  
15 original Complaint." (See Docket Entry No. 7 at 13). Plaintiff is  
16 required to follow the Court's instructions and the Local Rules in  
17 any future amended complaint.  
18

19 **C. The FAC Fails To Allege Municipal Liability**  
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21 In order to successfully bring suit against a local government  
22 agency under § 1983, a plaintiff must establish that "the action that  
23 is alleged to be unconstitutional implements or executes a policy  
24 . . . ordinance, regulation, or decision officially adopted and  
25 promulgated by "the municipality, or that the action was "visited  
26 pursuant to a governmental 'custom.'" Monell v. Dep't of Soc. Servs.  
27 Of City of N.Y., 436 U.S. 658, 690-91 (1978). In other words, a  
28 plaintiff must show that a "deliberate action[,] attributable to the

1 municipality itself[,] is the 'moving force' behind the plaintiff's  
2 deprivation of federal rights." Bd. of Cty. Comm'rs of Bryan Cty.  
3 Okl. v. Brown, 520 U.S. 397, 400 (1997).

4  
5 Here, Plaintiff has not identified any policy, ordinance, or  
6 custom of the County Jail that led to the deprivation of Plaintiff's  
7 constitutional rights. (See FAC. at 5-7). Instead, Plaintiff merely  
8 alleges that he was denied medical treatment. These allegations are  
9 insufficient to state a viable Monell claim. Accordingly, the FAC is  
10 dismissed with leave to amend.

11  
12 V.

13 ORDER

14  
15 For the reasons discussed above, the Court DISMISSES the First  
16 Amended Complaint WITH LEAVE TO AMEND. If Plaintiff still wishes to  
17 pursue this action, he shall file a Second Amended Complaint **no later**  
18 **than 30 days from the date of this Order.** The Second Amended  
19 Complaint must cure the pleading defects discussed above and shall be  
20 complete in itself without reference to the FAC or original  
21 Complaint. See L.R. 15-2 ("Every amended pleading filed as a matter  
22 of right or allowed by order of the Court shall be complete including  
23 exhibits. The amended pleading shall not refer to the prior,  
24 superseding pleading."). This means that Plaintiff must allege and  
25 plead any viable claims in the FAC and the original Complaint again.

26  
27 In any amended complaint, Plaintiff should identify the nature  
28 of each separate legal claim and confine his allegations to those

1 operative facts supporting each of his claims. Pursuant to Federal  
2 Rule of Civil Procedure 8(a), all that is required is a "short and  
3 plain statement of the claim showing that the pleader is entitled to  
4 relief." However, Plaintiff is advised that the allegations in the  
5 Second Amended Complaint should be consistent with the authorities  
6 discussed above. In addition, the Second Amended Complaint may not  
7 include new Defendants or claims not reasonably related to the  
8 allegations in the previously filed complaints. **Plaintiff is**  
9 **strongly encouraged to once again utilize the standard civil rights**  
10 **complaint form when filing any amended complaint, a copy of which is**  
11 **attached.**

12  
13 Plaintiff is explicitly cautioned that failure to timely file a  
14 Second Amended Complaint, or failure to correct the deficiencies  
15 described above, may result in a recommendation that this action, or  
16 portions thereof, be dismissed with prejudice for failure to  
17 prosecute and/or failure to comply with court orders. See Fed. R.  
18 Civ. P. 41(b). Plaintiff is further advised that if he no longer  
19 wishes to pursue this action in its entirety or with respect to

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1 particular Defendants or claims, he may voluntarily dismiss all or  
2 any part of this action by filing a Notice of Dismissal in accordance  
3 with Federal Rule of Civil Procedure 41(a)(1). A form Notice of  
4 Dismissal is attached for Plaintiff's convenience.

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6 IT IS SO ORDERED.

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8 Dated: March 17, 2017

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10 \_\_\_\_\_/s/\_\_\_\_\_  
11 ALKA SAGAR  
12 United States Magistrate Judge  
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