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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

SYLEE CASTLE, Plaintiff, v. E. TICE, et al., Defendants.	}	Case No.: CV 17-06031-JVS (JDE) MEMORANDUM AND ORDER DISMISSING FIRST AMENDED COMPLAINT WITH LEAVE TO AMEND
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I.

BACKGROUND

On August 14, 2017, Plaintiff Sylee Castle (“Plaintiff”), a California state prisoner at California State Prison, Los Angeles County (the “Prison”), located in Lancaster, California, proceeding pro se, filed a civil rights Complaint alleging that defendants E. Tice, the lead groundskeeper at the Prison and N. Marquez, a correctional sergeant, violated Plaintiff’s Eighth Amendment rights by failing to properly maintain the grounds of the Prison for Plaintiff, who uses a wheelchair for mobility. Dkt. 1 at p. 5 (CM/ECF pagination) and ¶¶ 16, 17. The Court performing its screening function under 28 U.S.C. 1915(e)(2) and 1915A, dismissed the Complaint with leave to

1 amend. Dkt. 7. On November 20, 2017, Plaintiff filed a First Amended
2 Complaint (“FAC”) again naming defendants Tice and Marquez. Dkt. 12.

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

7 **II.**

8 **MATERIAL NEW ALLEGATIONS IN THE FAC**

9 In summary, Plaintiff alleges, “this is an action challenging failure to
10 protect Plaintiff’s personal safety that caused Plaintiff harm” at the Prison.
11 FAC ¶ 1. As with the original complaint, Plaintiff alleges that on March 2,
12 2016, a fellow inmate pushed him in his wheelchair from the north side to the
13 south side of the Prison through a small gate area between buildings 3 and 4.
14 FAC ¶¶ 4, 18. The right front wheel of Plaintiff’s wheelchair became stuck in a
15 crack of uneven concrete pavers in the gate area “where inmate traffic is forced
16 to funnel through,” resulting in the wheelchair tilting over and causing
17 Plaintiff’s head to strike the ground with a resulting contusion to his right
18 shoulder. *Id.* ¶¶ 4-5, 18-19. Plaintiff alleges that “Facility (B) was required to
19 make various changes and improvements to the recreation yard” but no such
20 changes were made, although Plaintiff does not allege who “required” the
21 alleged changes. *Id.* ¶¶ 5-6, 19-20. Plaintiff alleges he was taken to a medical
22 facility because he had “lost all movements in his lower extremities” due to the
23 aggravation of a pre-existing spinal cord injury caused by the incident; he was
24 diagnosed with a contusion and given acetaminophen for pain. *Id.* ¶¶ 7, 21.

26 Plaintiff alleges that on March 3, 2016, he sent a form to Defendant
27 Marquez requesting that the area between the north side and south side gates
28 be evenly laid with concrete. FAC ¶¶ 8, 22. Six days later, having not received

1 a response, Plaintiff alleges he filed an appeal requesting the area in question
2 be paved evenly with concrete and requested that another gate be opened until
3 the requested construction was completed. Id. ¶¶ 9, 23. Plaintiff alleges that on
4 March 22, 2016, Defendant Tice put dirt around the concrete pavers and in
5 between the cracks, but because of foot traffic, the dirt eventually became
6 spread apart. Id. ¶¶ 10, 24. Plaintiff alleges that on April 6, 2016, a fellow
7 inmate was again pushing him in his wheelchair in the same area and, again,
8 his wheelchair was stuck in a crack, which caused the right front wheel to
9 come off, causing Plaintiff to balance himself with his right foot, causing pain
10 in his lower back, right hip and right leg, resulting in Plaintiff receiving
11 Ibuprofen and physical therapy. Id. ¶¶ 11, 23. On April 12, 2016, Defendant
12 Tice removed the concrete pavers and replaced them with sand, which Plaintiff
13 alleges led to further difficulty in his ability to navigate his wheelchair. Id. ¶¶
14 12, 24.

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16 Plaintiff alleges that Defendant Tice “was at all times mentioned herein
17 the Prison lead groundskeeper” and Defendant Marquez “was at all times
18 mentioned herein a correctional sergeant.” FAC ¶¶ 16-17. Plaintiff alleges that
19 Defendant Tice “failed to take the corrective measure to make the pathway ...
20 evenly laid with concrete as a result of his failure Plaintiff injured himself,” by
21 which Defendant Tice “violated his oath of allegiance contractual duties,
22 obligations and responsibilities to comply with and honor the articles,
23 amendments, codes, directives, guidelines, policies, procedures, protocols,
24 regulations, requirements, rules and statutes of the United States and the State
25 of California Constitution and subsequent governing laws when he failed in his
26 duty to take the corrective measure to make the pathway . . . evenly laid with
27 concrete when [Defendant Tice] knew that wheelchairs could get stuck in the
28 cracks in between the concrete pavers and injure themselves, because Plaintiff

1 had already injured himself and Defendant Tice was aware of this but still
2 [illegible] he failed to protect Plaintiff[’s] personal safety when he failed to
3 make the pathway ... evenly laid with concrete that caused Plaintiff harm once
4 he was put on notice.” Id. ¶¶ 13, 27-28. The FAC further alleges that “[b]y
5 Defendant Tice taking his oath of allegiance under Department of Operational
6 Manual (DOM) Section 33030.1 Policy, DOM Section 33030.2 Purpose,
7 DOM Section 33030.3 Employees Performance Standard, DOM Section
8 33030.3.0 Code of Conduct, it was Defendant Tice[’s] duty and obligation to
9 comply with all applicable laws and regulations, and to obey the law and
10 regulations of the Department including to provide Plaintiff personal safety.”
11 Id. ¶ 29. The FAC alleges that Defendant Tice “knew this and still violated and
12 disobeyed the Department policy to protect Plaintiff’s personal safety when he
13 knew inmates in wheelchairs could get stuck in between the concrete pavers
14 and injure themselves.” Id. ¶ 30. The FAC alleges, in vague, conclusory and
15 repetitive terms, to alleged that Defendant Tice, as “lead groundskeeper”
16 violated “department policy” by putting dirt between pavers on the pathway,
17 alleging that Defendant Tice “failed to follow” unspecified “lawful
18 instructions” or refused “to act lawfully as directed by” an unspecified
19 “supervisor or higher ranking official,” and he “knew or should have known”
20 that his actions were “inappropriate.” Id. ¶¶ 31-33. Plaintiff alleges that
21 Defendant Tice “disregarded Plaintiff[’s] request to make the pathway ...
22 evenly laid with concrete [without] penalogical interest or sound justification”
23 constituting “deliberate indifference . . . in not protective Plaintiff[’s] personal
24 safety.” Id. ¶¶ 34-35.

26 Plaintiff alleges Defendant Marquez similarly “violated his oath of
27 allegiance contractual duties, obligations and responsibilities to comply with
28 and honor the articles, amendments, codes, directives, guidelines, policies,

1 procedures, protocols, regulations, requirements, rules and statutes of the
2 United States and the State of California Constitution and subsequent
3 governing laws when he failed to open the big pedestrian gate on the north and
4 south side of the Prison to prevent Plaintiff[’s] wheelchair from getting stuck in
5 cracks in between the concrete pavers and causing Plaintiff to re-injure himself
6 once he was put on notice.” FAC ¶ 36. Plaintiff alleges that “[b]y Defendant
7 Tice [sic] taking his oath of allegiance under Department of Operational
8 Manual (DOM) Section 33030.1 Policy, DOM Section 33030.2 Purpose,
9 DOM Section 33030.3 Employees Performance Standard, DOM Section
10 33030.3.0 Code of Conduct, it was Defendant Marquez[’s] duty and obligation
11 to comply with all applicable laws and regulations, and to obey the law and
12 regulations of the Department including protecting Plaintiff[’s] personal safety
13 by opening the big pedestrian gate.” Id. ¶ 37. Plaintiff alleges that Defendant
14 Marquez knew that “inmates in wheelchairs could get stuck in the cracks in
15 between the concrete pavers and injure themselves” but nonetheless “refused
16 to open up the big pedestrian gate” and “violated and disobeyed” unspecified
17 “Department policy.” Id. ¶¶ 37-38. The FAC alleges that “per DOM & Code
18 on inefficiency D-26 state, failure to observe and perform within the scope of
19 training, Defendant Marquez violated this policy of the department when he
20 refused to open up the big pedestrian gate when he knew inmates in
21 wheelchairs could get stuck in the cracks in between the concrete pavers and
22 injure themselves” and “Defendant Marquez failed to protect Plaintiff[’s]
23 personal safety per DOM Section E Integrity E-4 state failure to follow lawful
24 instruction or refusal to act lawfully directed by a supervisor or higher ranking
25 official. Defendant Marquez violated and disobeyed this policy of the
26 Department when he failed to act lawfully by not opening the big pedestrian
27 gate.” Id. at ¶¶ 39-40. Plaintiff alleges that Defendant Marquez “knew or
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1 should have known” that his actions were “inappropriate” when he “failed in
2 his responsibilities and duties to open up the big pedestrian gate . . . to protect
3 Plaintiff[’s] personal safety.” Id. ¶ 41. Plaintiff further alleged that Defendant
4 Marquez disregarded Plaintiff’s request and grievance appeal to open up the
5 big pedestrian gate and his actions resulted in “deliberate indifference” under
6 the Eighth Amendment. Id. ¶ 42-43.

7 Plaintiff alleges that he “has become mentally upset, depressed and
8 aggravated . . . has suffered mental and physical pain and suffering [including]
9 . . . nightmares, anxiety, humiliation, indignities and the deterioration of his
10 lower right extremities which affected his daily activities.” FAC ¶ 42. Plaintiff
11 alleges that the acts alleged “were willful, wanton, malicious, oppressive,
12 vexatious, deliberate and done with reckless indifference and/or callous
13 disregard to Plaintiff[’s] health and safety. Id. ¶ 42.

14 III.

15 STANDARD OF REVIEW

16 A complaint may be dismissed as a matter of law for failure to state a
17 claim for two reasons: 1) lack of a cognizable legal theory; or 2) insufficient
18 facts under a cognizable legal theory. See Balistreri v. Pacifica Police Dep’t,
19 901 F.2d 696, 699 (9th Cir. 1990). In determining whether the complaint states
20 a claim on which relief may be granted, its allegations of material fact must be
21 taken as true and construed in the light most favorable to Plaintiff. See Love v.
22 United States, 915 F.2d 1242, 1245 (9th Cir. 1989). Further, since Plaintiff is
23 appearing pro se, the Court must construe the allegations of the complaint
24 liberally and must afford Plaintiff the benefit of any doubt. See Karim-Panahi
25 v. Los Angeles Police Dep’t, 839 F.2d 621, 623 (9th Cir. 1988).

26 “[T]he liberal pleading standard . . . applies only to a plaintiff’s factual
27 allegations.” Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). With respect to
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1 Plaintiff's pleading burden, the Supreme Court has held that "a plaintiff's
2 obligation to provide the 'grounds' of his 'entitlement to relief' requires more
3 than labels and conclusions, and a formulaic recitation of the elements of a
4 cause of action will not do. . . . Factual allegations must be enough to raise a
5 right to relief above the speculative level . . . on the assumption that all the
6 allegations in the complaint are true (even if doubtful in fact)." Bell Atlantic
7 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted,
8 alteration in original); see also Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
9 (holding that to avoid dismissal for failure to state a claim, "a complaint must
10 contain sufficient factual matter, accepted as true, to 'state a claim to relief that
11 is plausible on its face.' A claim has facial plausibility when the plaintiff pleads
12 factual content that allows the court to draw the reasonable inference that the
13 defendant is liable for the misconduct alleged." (internal citation omitted)).

14 If the Court finds that a complaint should be dismissed for failure to state
15 a claim, the Court has discretion to dismiss with or without leave to amend.
16 Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to
17 amend should be granted if it appears possible that the defects in the complaint
18 could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also
19 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that "[a] pro
20 se litigant must be given leave to amend his or her complaint, and some notice
21 of its deficiencies, unless it is absolutely clear that the deficiencies of the
22 complaint could not be cured by amendment") (citing Noll v. Carlson, 809
23 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is
24 clear that a complaint cannot be cured by amendment, the Court may dismiss
25 without leave to amend. Cato, 70 F.3d at 1105-06; see, e.g., Chaset v.
26 Fleer/Skybox Int'l, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that "there is
27 no need to prolong the litigation by permitting further amendment" where the
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1 “basic flaw” in the pleading cannot be cured by amendment); Lipton v.
2 Pathogenesis Corp., 284 F.3d 1027, 1039 (9th Cir. 2002) (holding that
3 “[b]ecause any amendment would be futile, there was no need to prolong the
4 litigation by permitting further amendment”).

5 IV.

6 DISCUSSION

7 A. Applicable Legal Standard under Section 1983

8 In order to state a claim against a particular defendant for violation of his
9 civil rights under 42 U.S.C. § 1983 (“Section 1983” or “§ 1983”), a plaintiff
10 must allege that the defendant, acting under color of state law, deprived the
11 plaintiff of a right secured by the Constitution or a federal statute. See Karim-
12 Panahi v. Los Angeles Police Dep’t, 839 F.2d 621, 624 (9th Cir. 1988). “A
13 person deprives another ‘of a constitutional right, within the meaning of
14 section 1983, if he does an affirmative act, participates in another’s affirmative
15 acts, or omits to perform an act which he is legally required to do that causes
16 the deprivation.’” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988) (quoting
17 Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)) (emphasis in original).

18 The treatment a prisoner receives in prison and the conditions under
19 which the prisoner is confined are subject to scrutiny under the Eighth
20 Amendment, which prohibits cruel and unusual punishment See Helling v.
21 McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan, 511 U.S. 825, 832
22 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts
23 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble,
24 429 U.S. 97, 102 (1976). However, conditions of confinement may be harsh
25 and restrictive. See Rhodes v. Chapman, 452 U.S. 337, 347 (1981) (“To the
26 extent that . . . conditions are restrictive and even harsh, they are part of the
27 penalty that criminal offenders pay for their offenses against society”).
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1 Nonetheless, prison officials must provide prisoners with “food, clothing,
2 shelter, sanitation, medical care, and personal safety” Toussaint v. McCarthy,
3 801 F.2d 1080, 1107 (9th Cir. 1986), overruled in part on other grounds by
4 Sandin v. Conner, 515 U.S. 472 (1995).

5 A prison official violates a prisoner’s Eighth Amendment right to
6 personal safety only when two requirements are met: 1) objectively, the
7 official’s act or omission must be so serious such that it results in the denial of
8 the minimal civilized measure of life’s necessities; and 2) subjectively, the
9 prison official must have acted with deliberate indifference to an inmate’s
10 safety. See Farmer, 511 U.S. at 834. To demonstrate deliberate indifference, a
11 plaintiff must show that the official knowingly disregarded an excessive risk to
12 inmate safety. Id. at 837.

13 B. Analysis

14 The FAC fails to allege sufficient facts under either of the Farmer prongs
15 to state a claim for a civil rights violation based upon Eighth Amendment
16 deliberate indifference.

17 1. The FAC Does not Allege a Serious Risk to Plaintiff’s Safety

18 As to the objective component, the substance of Plaintiff’s allegations
19 remain unchanged: Plaintiff alleges that defendants failed to address the issues
20 with the navigability of a particular concrete pathway to Plaintiff’s satisfaction
21 after his wheelchair had twice become stuck on a crack between concrete
22 pavers. FAC ¶¶ 4, 8, 10, 13. But “[n]ot every deviation from ideally safe
23 conditions amounts to a constitutional violation,” Hoptowit v. Spellman, 753
24 F.2d 779, 784 (9th Cir. 1985).

25 The Court continues to find that the current allegations regarding the
26 condition of the pathway do not amount to a denial of the minimal measure of
27 life’s necessities. See Osolinski v. Kane, 92 F.3d 934, 938 (9th Cir. 1996) (no
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1 single defective condition, without others contributing to the threat of safety,
2 creates an objectively insufficiently humane condition violative of the Eighth
3 Amendment); Stewart v. Carzon, No. C 14-2625 LHK (PR), 2015 WL
4 5569387, at *2 (N.D. Cal. Sept. 18, 2015) (finding a prisoner failed to state a
5 cognizable Eighth Amendment claim for injury associated with a walker
6 getting stuck in a damaged floor because the damaged floor, by itself, did not
7 pose the type of threat to inmate safety that amounted to a constitutional
8 violation); Smith v. County of Los Angeles, No. CV 12-02444-JAK (JEM),
9 2013 WL 1829821 at *5 (C.D. Cal. Mar. 12, 2013) (plaintiff, who had
10 previously complained multiple times about an alleged dangerous slippery area
11 and thereafter fell and hit his head, resulting in a laceration requiring
12 paramedics to transport him to an outside hospital, had not sufficiently alleged
13 an Eighth Amendment violation).

14 Plaintiff alleges two instances in which his wheelchair became stuck in
15 sand between pavers. In the first incident, the wheelchair fell over and Plaintiff
16 suffered a bruised shoulder and pain for which he was given acetaminophen
17 (Tylenol). In the second incident, the wheelchair remained upright but Plaintiff
18 was forced to use his leg for balance, resulting in pain, treated by ibuprofen,
19 and physical therapy. The Court finds that these allegations, read in the light
20 most favorable to Plaintiff, do not describe a situation so serious such that it
21 results in the denial of the minimal civilized measure of life's necessities. The
22 allegations in the FAC do not meet the first Farmer prong.

23 2. The FAC Does Not Allege Knowing Disregard by Defendants

24 As to the subjective prong, the FAC does not allege facts, as opposed to
25 legal conclusions, sufficient to permit an inference that defendants knew of and
26 disregarded an excessive risk to Plaintiff's health or safety by failing to take
27 reasonable steps to abate it. See Farmer, 511 U.S. at 837. The FAC alleges that
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1 Defendants Tice and Marquez were aware that Plaintiff's wheelchair, while
2 being pushed by another inmate, had tipped over once in the pathway and had
3 almost tipped over a second time, resulting in a bruised should and pain
4 treated by acetaminophen and ibuprofen. These allegations does not rise to a
5 level of knowledge of an excessive risk to Plaintiff's health or safety.

6 Further, even if the FAC did sufficiently allege subjective knowledge of
7 an excessive risk Plaintiff has not, and thus far appears cannot, allege that
8 Defendants Tice and Marquez did not take reasonable steps to abate the risk.
9 Plaintiff concedes that within days of his wheelchair tipping over, Defendant
10 Tice filled took steps to abate the risk by filling space between the pavers, and
11 shortly after the second incident, the pavers were removed altogether.

12 The allegations of the FAC do not show either: (1) a serious,
13 unreasonable risk to Plaintiff's safety; or (2) a subjective awareness of and
14 disregard of such a risk by either defendant. It fails to state a claim.

15
16 3. The FAC Does Not Allege a Causal Connection to the Defendants

17 An individual defendant cannot be held liable on a civil rights claim
18 unless the facts establish the defendant's personal involvement in the
19 constitutional deprivation or a causal connection between the defendant's
20 wrongful conduct or dereliction and the alleged deprivation. See Redman v.
21 Cty. of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc), abrogated on
22 other grounds by Farmer, 511 U.S. at 825. "A plaintiff must allege facts, not
23 simply conclusions, that show that an individual was personally involved in
24 the deprivation of his civil rights." Barren v. Harrington, 152 F.3d 1193, 1194
25 (9th Cir. 1998). "The inquiry into causation must be individualized and focus
26 on the duties and responsibilities of each individual defendant whose acts or
27 omissions are alleged to have caused a constitutional deprivation." Leer v.
28 Murphy, 844 F.2d 628, 633 (9th Cir. 1988).

1 Plaintiff contends that each Defendant's refusal to perform certain
2 actions to address the issue related to the concrete pavers constituted a
3 dereliction of duties pursuant to the California Department of Corrections &
4 Rehabilitation's (CDCR) Operations Manual. See FAC ¶¶ 31-40. As a
5 preliminary matter, Plaintiff references parts of the CDCR Operations Manual
6 that relate to employee discipline and the code of conduct and do not set forth
7 clear responsibilities for Defendants when presented with issues related to
8 inmates' personal safety. Further, even if Plaintiff's allegations were
9 sufficiently pled to demonstrate a violation, a violation of a prison policy like
10 the CDCR Operations manual would be unavailing as "state departmental
11 regulations do not establish a federal constitutional violation." Cousins v.
12 Lockyer, 568 F.3d 1063, 1070 (9th Cir. 2009) (emphasis in original) (citing
13 Case v. Kitsap Cty. Sheriff's Dep't, 249 F.3d 921, 930 (9th Cir. 2001) ("there is
14 no § 1983 liability for violating prison policy. [Plaintiff must prove that [the
15 official violated his constitutional right"])

16 Plaintiff has not, and it appears cannot, state a claim for deliberate
17 indifference against Defendants Tice and Marquez.
18

19 V.

20 CONCLUSION AND ORDER

21 Based upon the foregoing, the FAC does not state a claim upon which
22 relief can be granted, and the Court is doubtful that it can be amended to state
23 a claim. If Plaintiff still desires to pursue his claims and, considering the
24 foregoing, can factually do so, he shall file a Second Amended Complaint
25 **within thirty (30) days of the date of this Order** remedying the deficiencies
26 discussed above.

27 Plaintiff's Amended Complaint should bear the docket number assigned
28 in this case; be labeled "Second Amended Complaint"; and be complete in and

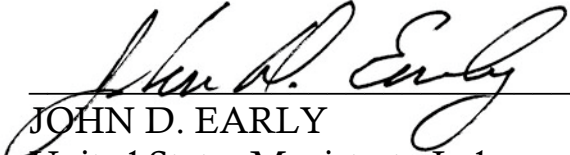
1 of itself without reference to the prior complaints or any other pleading or
2 document. The Second Amended Complaint must list the names of each
3 defendant in the caption, on the first page. See Fed. R. Civ. Proc. 10(a); Local
4 Rule 11-3.8(d). The Second Amended Complaint will supersede the original
5 complaint and the FAC. The Second Amended Complaint may not alter the
6 nature of this suit by alleging new, unrelated claims. The Second Amended
7 Complaint must identify which defendants are named in which counts, and
8 specify the factual allegations that Plaintiff contends supports liability for each
9 individual defendant.

10 Plaintiff is strongly advised to review this Order carefully regarding the
11 various deficiencies outlined herein. If, after review, Plaintiff should decide not
12 to further pursue this action, Plaintiff may file a Notice of Dismissal Pursuant
13 to Federal Rule of Civil Procedure 41(a). The Clerk is directed to provide
14 Plaintiff with a copy of a blank for Notice of Dismissal.

15 Plaintiff is advised that a voluntary dismissal does not constitute a
16 “strike” under 28 U.S.C. § 1915(g), whereas a dismissal of a civil complaint
17 filed by a prisoner on the grounds that it “fails to state a claim upon which
18 relief may be granted” would constitute a “strike.” See 28 U.S.C. § 1915(g).

19 **Plaintiff is admonished that, if he fails to timely file a Second**
20 **Amended Complaint within 30 days of the date of this Order, the Court will**
21 **recommend that this action be dismissed for failure to diligently prosecute.**

22 Dated: December 5, 2017

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26 JOHN D. EARLY
27 United States Magistrate Judge
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