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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

VINCENT S. PHILLIPS,
Plaintiff,
v.
DEAN BORDERS, et al.,
Defendants.

Case No. EDCV 16-01568-MWF (JDE)

MEMORANDUM AND ORDER
DIMISSING SECOND AMENDED
COMPLAINT WITH LEAVE TO
AMEND

I.

BACKGROUND

On July 18, 2016, Plaintiff Vincent S. Phillips (“Plaintiff”), who was at that time a prisoner at the California Institute of Men (“the Prison”) in Chino, California, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 (“Section 1983” or “§ 1983”). Dkt. 1 (“Complaint”). By order dated September 7, 2016, the Court, performing its screening function under 28 U.S.C. 1915(e)(2) and 1915A, dismissed the Complaint with leave to amend. On February 6, 2007, Plaintiff filed a First Amended Complaint (“FAC”). By order dated May 5, 2017, the Court, again performing its screening function, entered an order dismissing the FAC with leave to amend.

1 including a prior Type A aorta dissection surgery and a new Type B aorta
2 heart dissection; migraine headaches; severe abdominal pain; hearing
3 problems; glaucoma; and recent eye surgery. SAC ¶¶ 2-4. Plaintiff alleges that
4 he had been prescribed a number of medical devices and appliances, such as a
5 hearing aid, “tent to transition glasses,” back and knee braces, and an orthotic
6 boot. Id. ¶ 2. Plaintiff alleges that he advised Dr. Duong shortly after his arrival
7 that “it was necessary for her to issue him chrono’s for all his medical
8 appliances, eye glasses, and orthotic [boots], for all of his above stated medical
9 conditions” as well as requesting a follow-up visit from an ophthalmologist,
10 but Dr. Duong refused his requests. Id. ¶ 3. Plaintiff alleges that the denial of
11 the various medical appliances caused him pain, foot problems, headaches,
12 and deterioration of hearing and vision. Id. Plaintiff further alleges that Dr.
13 Duong, knowing that Plaintiff suffered from Hepatitis C, stage 3, refused to
14 treat him, which Plaintiff alleges resulted in various harm, including cirrhosis
15 of the liver, bruising, and other symptoms. Id. ¶¶ 5-6.

16 Plaintiff alleges that a cardiologist had recommended physical therapy
17 and a change in medication but Dr. Duong refused the recommendations,
18 instead doubling Plaintiff’s existing medication over Plaintiff’s protests, leading
19 Plaintiff to suffer from an abnormal heart rate and to experience a fall and a
20 blackout. SAC ¶ 7. Plaintiff also alleges that he made repeated requests for
21 treatment of bruises and bleeding sores which flared up upon his arrival at the
22 Prison, including requests to Dr. Farooq, whom Plaintiff alleges “is in charge
23 of overseeing Medical 602 complaints”; yet Plaintiff alleges that Dr. Duong
24 did not properly prescribe medication for the problem, but instead referred
25 Plaintiff to a dermatologist. Id. ¶ 8.

26 Plaintiff alleges that “defendant” “changed [Plaintiff’s permanent]
27 medical chrono’s” which Plaintiff alleges was undertaken to allow “defendant”
28 to refuse Plaintiff’s medical requests for his previously diagnosed conditions

1 and prescriptions.² SAC ¶ 9. Plaintiff alleges that “defendant” changed
2 Plaintiff’s medical records “many times” and this “removal/falsification of his
3 medical records” prejudiced him because the California Department of
4 Corrections and Rehabilitation (“CDCR”) would only consider “defendant’s”
5 new documentation, not the prior “medical archived records,” to analyze
6 grievances. Id.³ ¶¶ 9-10. Plaintiff alleges that after filing medical complaints
7 against Dr. Duong, Plaintiff was placed in handcuffs and sent to OHU in
8 retaliation for the complaints, although the administrative reason provided was
9 “for plaintiff’s safety because he kept falling.” Id. ¶ 11. Plaintiff’s chronological
10 allegation of “the facts” supporting his claims ends, although additional
11 allegations are contained in the ensuing pages of the SAC in the description of
12 the alleged roles of the defendants and in setting forth the purported causes of
13 action, and will be discussed by the Court as appropriate herein.

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

23 ² As Plaintiff refers to Dr. Duong as “defendant” in the preceding paragraphs, it
24 appears Plaintiff also refers to him in ¶ 9 regarding alleged altered “chrono’s.”
25 However, the Court notes that Plaintiff later asserts that Dr. Garikaoarki “changed
all of plaintiff’s chrono’s” (SAC ¶ 16).

26 ³ In this and other portions of the SAC, Plaintiff refers to Exhibits. Although the
27 SAC includes a list of purported exhibits (SAC at 28-29), no such exhibits are
28 included and thus are not considered by the Court herein.

1 United States, 915 F.2d 1242, 1245 (9th Cir. 1989). Further, since Plaintiff is
2 appearing pro se, the Court must construe the allegations of the complaint
3 liberally and afford him the benefit of any doubt. See Karim-Panahi v. Los
4 Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988). However, “the liberal
5 pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitzke
6 v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil
7 rights complaint may not supply essential elements of the claim that were not
8 initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th
9 Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).
10 Moreover, with respect to Plaintiff’s pleading burden, the Supreme Court has
11 held that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to
12 relief’ requires more than labels and conclusions, and a formulaic recitation of
13 the elements of a cause of action will not do. . . . Factual allegations must be
14 enough to raise a right to relief above the speculative level . . . on the
15 assumption that all the allegations in the complaint are true (even if doubtful in
16 fact).” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (citations
17 omitted, alteration in original); see also Ashcroft v. Iqbal, 556 U.S. 662, 678
18 (2009) (to avoid dismissal for failure to state a claim, “a complaint must
19 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that
20 is plausible on its face.’ A claim has facial plausibility when the plaintiff pleads
21 factual content that allows the court to draw the reasonable inference that the
22 defendant is liable for the misconduct alleged.” (internal citation omitted)).

23 If the Court finds that a complaint should be dismissed for failure to state
24 a claim, the Court has discretion to dismiss with or without leave to amend.
25 Lopez v. Smith, 203 F.3d 1122, 1126-30 (9th Cir. 2000) (en banc). Leave to
26 amend should be granted if it appears possible that the defects in the complaint
27 could be corrected, especially if a plaintiff is pro se. Id. at 1130-31; see also
28 Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (noting that “[a] pro

1 se litigant must be given leave to amend his or her complaint, and some notice
2 of its deficiencies, unless it is absolutely clear that the deficiencies of the
3 complaint could not be cured by amendment”) (citing Noll v. Carlson, 809
4 F.2d 1446, 1448 (9th Cir. 1987)). However, if, after careful consideration, it is
5 clear that a complaint cannot be cured by amendment, the Court may dismiss
6 without leave to amend. Cato, 70 F.3d at 1105-06; see, e.g., Chaset v.
7 Fleer/Skybox Int’l, 300 F.3d 1083, 1088 (9th Cir. 2002) (holding that “there is
8 no need to prolong the litigation by permitting further amendment” where the
9 “basic flaw” in the pleading cannot be cured by amendment); Lipton v.
10 Pathogenesis Corp., 284 F.3d 1027, 1039 (9th Cir. 2002) (holding that
11 “[b]ecause any amendment would be futile, there was no need to prolong the
12 litigation by permitting further amendment.”).

13 IV.

14 DISCUSSION

15 The SAC alleges five claims: (1) falsifying medical records; (2) deliberate
16 indifference and a failure to provide medical care; (3) deprivation of due
17 process and cruel and unusual punishment; (4) conspiracy; and (5) failure to
18 hire, train, supervise, and discipline personnel properly. SAC ¶¶ 21-48. The
19 individual claims do not limit themselves to certain defendants; as a result, the
20 Court will treat each claim as having been alleged against each defendant.

21 Section 1983 provides a method by which individuals can sue for
22 violations of their federal rights. Cortez v. County of Los Angeles, 294 F.3d
23 1186, 1188 (9th Cir. 2002). To state a claim under § 1983, a plaintiff must
24 allege that the violation was committed by a “person” acting under the color of
25 State law. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 71 (1989). The
26 other requisite element is that a right secured by the Constitution or laws of the
27 United States was violated. Long v. County of Los Angeles, 442 F.3d 1178,
28 1185 (9th Cir. 2006) (citing West v. Atkins, 487 U.S. 42, 48 (1988)).

1 **A. Claims against Kelso**

2 Plaintiff alleges Kelso is “the medical receiver appointed by the three-
3 judge court” overseeing, among other things, the CDCR medical grievance
4 procedure, and was at all relevant times acting in that capacity. SAC ¶ 14.
5 Other than unspecific references to promulgating procedures and policy, the
6 SAC does not allege any specific act by Kelso, instead alleging that Kelso “is
7 responsible for the acts and conduct of his subordinates.” Id.

8 The claims for damages against Kelso fail as a matter of law because
9 Kelso, purportedly sued exclusively for his actions or inaction as a court-
10 appointed receiver, is entitled to quasi-judicial immunity, and Plaintiff has not
11 pled facts that would remove his purported claims against Kelso from the cloak
12 of such immunity. See Stump v. Sparkman, 435 U.S. 349, 355–56 (1978)
13 (explaining doctrine of judicial immunity); Mosher v. Saalfeld, 589 F.2d 438,
14 442 (9th Cir. 1978) (judicial immunity extends to court-appointed receivers);
15 Patterson v. Kelso, 698 F. App’x 393, 394 (9th Cir. 2017) (affirming dismissal
16 of claims against Kelso without leave to amend based upon quasi-judicial
17 immunity as a court-appointed receiver); see also Williams v. CDCR, No.
18 1:14-CV-01912-JLT (PC), 2015 WL 6669816, at *6 (E.D. Cal. Oct. 29, 2015)
19 (affirming dismissal of claims against Kelso, noting that actions or inactions by
20 receiver in connection with prisoner’s medical needs fall within absolute quasi-
21 judicial immunity); Martinez v. Beard, No. 1:14-CV-00405-AWI-JLT (PC),
22 2014 WL 5305883, at *9 (E.D. Cal. Oct. 15, 2014) (finding no allegation Kelso
23 acted outside his jurisdiction despite plaintiff’s allegation that he was liable as
24 Receiver because he acted in such a way to deny medical care).

25 Plaintiff’s conclusory allegations against Kelso relate solely to his role as
26 a judicially appointed receiver. Kelso is entitled to absolute quasi-judicial
27 immunity. As a result, all of the claims against him are subject to dismissal.
28

1 **B. First Cause of Action: Falsifying Medical Records**

2 The First Cause of Action is entitled: “Falsifying Medical Records of
3 Plaintiff.” SAC at 18. There is no cognizable Eighth Amendment claim solely
4 for the falsification of medical records in and of itself, although such an act
5 may establish facts relevant to a claim for deliberate indifference. See Crisp v.
6 Wasco State Prison, No. 13-01899, 2015 WL 3486950, at *5 (E.D. Cal. June 2,
7 2015) (“While falsification or alteration of medical records may supply facts
8 relevant to an Eighth Amendment claim of deliberate indifference to serious
9 medical needs, Plaintiff has no independent claim for relief under the Eighth
10 Amendment for ‘denial of accurate medical records.’”); Bartholomew v.
11 Traquina, No. 10-3145, 2011 WL 4085479, at *3 (E.D. Cal. Sept. 13, 2011)
12 (“The falsification of records itself is insufficient to state a cognizable claim of
13 deliberate indifference to plaintiff’s serious medical needs.”).

14 Thus, the first cause of action in the SAC, as a stand-alone claim, fails to
15 state a claim upon which relief can be granted and is subject to dismissal.
16 However, the Court will interpret the factual averments in the first cause of
17 action relating to the alleged falsification of medical records as offered in
18 support for Plaintiff’s claim for deliberate medical indifference.

19 **C. Second Cause of Action: Deliberate Indifference**

20 The Eighth Amendment prohibits cruel and unusual punishment of a
21 convicted prisoner. See Whitley v. Albers, 475 U.S. 312, 318-19 (1986). Prison
22 officials are required to provide inmates with adequate medical care and the
23 failure to do so can constitute an Eighth Amendment violation. See Estelle v.
24 Gamble, 429 U.S. 97, 103-05 (1976); Colwell v. Bannister, 763 F.3d 1060,
25 1066 (9th Cir. 2014). A claim for inadequate medical care requires proof of
26 both an objective component—i.e., the existence of a “serious medical need”
27 —and a subjective component—a prison official’s “deliberate indifference”
28 thereto. Colwell, 763 F.3d at 1066.

1 An inmate's medical need is "serious" if failure to treat his or her
2 medical condition "could result in further significant injury" or could cause
3 "the 'unnecessary and wanton infliction of pain.'" Jett v. Penner, 439 F.3d
4 1091, 1096 (9th Cir. 2006) (citation omitted). "Indications that a plaintiff has a
5 serious medical need include '[t]he existence of an injury that a reasonable
6 doctor or patient would find important and worthy of comment or treatment;
7 the presence of a medical condition that significantly affects an individual's
8 daily activities; or the existence of chronic and substantial pain.'" Colwell, 763
9 F.3d at 1066 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir.
10 1991), overruled on other grounds by WMX Technologies, Inc., v. Miller, 104
11 F.3d 1133, 1136 (9th Cir. 1997)).

12 A prison official is deliberately indifferent under the subjective element
13 of the test only if the official "knows of and disregards an excessive risk to
14 inmate health and safety." Toguchi v. Chung, 391 F.3d 1051, 1057 (9th Cir.
15 2004) (citation omitted). This "requires more than ordinary lack of due care."
16 Farmer v. Brennan, 511 U.S. 825, 835 (1994) (quoting Whitley, 475 U.S. at
17 319). "[T]he official must both be aware of facts from which the inference
18 could be drawn that a substantial risk of serious harm exists, and he must also
19 draw the inference." Id. at 837. A delay in treatment does not constitute a
20 violation of the Eighth Amendment, unless the delay or denial was harmful.
21 See McGuckin, 974 F.2d at 1060; Shapley v. Nevada Bd. of State Prison
22 Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985); Hunt v. Dental Dep't., 865 F.2d
23 198, 200 (9th Cir. 1998) ("[D]elay in providing a prisoner with dental
24 treatment, standing alone, does not constitute an eighth amendment
25 violation"). While the harm caused by delay need not necessarily be
26 "substantial," McGuckin, 974 F.2d at 1060 & n.12, the Eighth Amendment is
27 violated if "delays occurred to patients with problems so severe that delays
28 would cause significant harm and that Defendants should have known this to

1 be the case,” Hallett v. Morgan, 296 F.3d 732, 746 (9th Cir. 2002).

2 Furthermore, an individual defendant cannot be held liable on a civil
3 rights claim unless the facts establish the defendant’s personal involvement in
4 the constitutional deprivation or a causal connection between the defendant’s
5 wrongful conduct and the alleged deprivation. See Redman v. County of San
6 Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc), abrogated on other
7 grounds by Farmer v. Brennan, 511 U.S. 825 (1994). “A plaintiff must allege
8 facts, not simply conclusions, which show that an individual was personally
9 involved in the deprivation of his civil rights.” Barren v. Harrington, 152 F.3d
10 1193, 1194 (9th Cir. 1998). “The inquiry into causation must be individualized
11 and focus on the duties and responsibilities of each individual defendant whose
12 acts or omissions are alleged to have caused a constitutional deprivation.” Leer
13 v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988).

14 In addition, Federal Rule of Civil Procedure 8(a)(2) requires that a
15 complaint contain “‘a short and plain statement of the claim showing that the
16 pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what
17 the . . . claim is and the grounds upon which it rests.’” Twombly, 550 U.S. at
18 555 (alteration in original). Rule 8(e)(1) instructs: “[e]ach averment of a
19 pleading shall be simple, concise, and direct.” A complaint violates Rule 8 if a
20 defendant would have difficulty responding to the complaint. Cafasso, U.S. ex
21 rel. v. General Dynamics C4 Sys., Inc., 637 F.3d 1047, 1059 (9th Cir. 2011).
22 This Court has discretion to dismiss for failure to comply with the
23 requirements of Rule 8 even when the complaint is not “wholly without
24 merit.” McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996). “Rule 8(e),
25 requiring each averment of a pleading to be ‘simple, concise, and direct,’
26 applies to good claims as well as bad, and is a basis for dismissal independent
27 of Rule 12(b)(6).” Id.

28 **1. Deliberate Indifference Claims against Dr. Duong**

1 Taking the SAC's allegations as true and in the light most favorable to
2 Plaintiff, the Court finds that the SAC has made sufficient allegations against
3 Dr. Duong to pass screening, a finding that is without prejudice to Dr. Duong
4 raising any motion or defense.

5 **2. Deliberate Indifference Claim against Drs. Garikaoarki, Cho,**
6 **Oh, Chin, and Lee and RN Navarro**

7 The deliberate indifference claims against Drs. Garikaoarki, Cho, Oh,
8 Chin, and Lee and RN Navarro do not allege sufficient facts, as opposed to
9 legal conclusions or conjecture, to support a claim upon which relief can be
10 granted under Rules 12(b)(6) and Rule 8 of the Federal Rules of Civil
11 Procedure and Twombly, 550 U.S. at 555 n.3 (holding that Rule 8(a)(2)
12 "requires a 'showing,' rather than a blanket assertion, of entitlement to relief").
13 General allegations that individuals were aware of alleged constitutional
14 violations by others do not create liability under Section 1983; rather, each
15 individual either must have done something to violate the Plaintiff's rights, or
16 must have failed to take action, which he or she had a legal responsibility to
17 take, and that failure caused the constitutional deprivation. See also Redman,
18 942 F.2d at 1446; Barren, 152 F.3d at 1194; Leer, 844 F.2d at 633; see also
19 Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir. 2011) (noting supervisory liability
20 under § 1983 requires either personal involvement in the constitutional
21 deprivation or a sufficient causal connection between "wrongful conduct" by
22 the supervisor and the constitutional violation).

23 For example, Plaintiff alleges that Drs. Garikaoarki, Cho, Oh, Chin, and
24 Lee and RN Navarro were "aware" that Plaintiff had been placed in OHU "in
25 retaliation for filing ... complaints." SAC ¶¶ 17, 18. However, Plaintiff does
26 not allege a First Amendment violation, and, as the Court noted in its order
27 dismissing Plaintiff's FAC, conclusory allegations regarding alleged retaliation
28 cannot support such a claim. Dkt. 23 at 12. Further, alleged knowledge of a

1 constitutional violation by another does not, in and of itself, create liability.
2 Similarly, general allegations that these defendants “were responsible for
3 plaintiff[’s] health care” (SAC ¶ 15) is a legal conclusion which the Court need
4 not and does not accept as true in determining whether the SAC states a claim
5 upon which relief can be granted. See Twombly, 550 U.S. at 555.

6 The Court notes that Plaintiff alleges at one point that “these four
7 defendants opted to falsify medical records, documents to cover up the
8 mistreatment of plaintiff . . .” (SAC ¶ 28), but the allegations are vague as to
9 which defendants to whom Plaintiff refers, as the prior paragraph (SAC ¶ 27)
10 lists five defendants. Further, in the typewritten “supporting facts” section of
11 the SAC, Plaintiff appears only to describe treatment by Dr. Duong in
12 connection with claims of falsifying medical records (see SAC at 8-12); yet in
13 another handwritten portion of the Complaint, Plaintiff refers to Dr.
14 Garikaoarki as having made retaliatory changes to Plaintiff’s records, but the
15 allegation is not tied to any treatment by Dr. Garikaoarki. SAC ¶ 16. With
16 respect to defendants other than Dr. Duong and Dr. Garikaoarki, at a
17 minimum, both the nature of who Plaintiff alleges falsified records and the
18 alleged records falsified are hopelessly vague and do not permit those
19 defendants to determine what it is they are alleged to have done under Rule 8.
20 With respect to Dr. Garikaoarki, the SAC does allege he falsified medical
21 records, but the SAC is inconsistent in this regard, and unlike the allegations
22 against Dr. Duong, against whom Plaintiff makes specific allegations of
23 deliberate indifference to serious medical needs beyond the claims of
24 falsification of records, Plaintiff makes no such specific claims as to Dr.
25 Garikaoarki. See Bartholomew, 2011 WL 4085479, at *3 (falsification of
26 records itself is insufficient to state a cognizable claim of deliberate indifference
27 to plaintiff’s serious medical needs).

28 Accepting all of Plaintiff’s factual allegations (but not legal conclusions)

1 as true, the Court find that the SAC fails to allege facts showing affirmative
2 conduct by Drs. Garikaoarki, Cho, Oh, Chin, and Lee and RN Navarro rising
3 to the level of deliberate indifference and further finds that the SAC fails to
4 allege facts showing that those defendants bear responsibility for the deliberate
5 indifference to Plaintiff's medical needs alleged against Dr. Duong. As a result,
6 the claims against Drs. Garikaoarki, Cho, Oh, Chin, and Lee and RN Navarro
7 are subject to dismissal.

8 **3. Deliberate Indifference Claim Against Warden Borders and Dr.**
9 **Farooq**

10 Although in Iqbal the Supreme Court reaffirmed that “[g]overnment
11 officials may not be held liable for the unconstitutional conduct of their
12 subordinates under a theory of respondeat superior” (556 U.S. at 676), the
13 Ninth Circuit has concluded that, at least in cases where the applicable
14 standard is deliberate indifference (such as for an Eighth Amendment claim),
15 Iqbal does not foreclose a plaintiff from stating a claim for supervisory liability
16 based upon the “supervisor’s knowledge of and acquiescence in
17 unconstitutional conduct by his or her subordinates.” Starr v. Baca, 652 F.3d
18 1202, 1207 (9th Cir. 2011). “A defendant may be held liable as a supervisor
19 under § 1983 ‘if there exists either (1) his or her personal involvement in the
20 constitutional deprivation, or (2) a sufficient causal connection between the
21 supervisor’s wrongful conduct and the constitutional violation.’” Id. at 1207
22 (citation omitted). A causal connection can be established “by setting in
23 motion a series of acts by others” or “knowingly refusing to terminate a series
24 of acts by others, which the supervisor knew or reasonably should have known
25 would cause others to inflict a constitutional injury.” Id. at 1207-08 (citations
26 and alterations omitted). “A supervisor can be liable in his individual capacity
27 for his own culpable action or inaction in the training, supervision, or control
28 of his subordinates; for his acquiescence in the constitutional deprivation; or

1 for conduct that showed a reckless or callous indifference to the rights of
2 others.” Id. at 1208 (citation omitted).

3 Here, accepting Plaintiff’s allegations as true and all reasonable
4 inferences in Plaintiff’s favor, the Court finds that the SAC meets the
5 minimum threshold to pass screening for a claim of deliberate indifference
6 against Dr. Farooq and Warden Borders, a finding that is without prejudice to
7 defendants raising any motion or defense.

8 **D. Third Cause of Action: Due Process**

9 Plaintiff entitles his purported third cause of action “Deprivation of Due
10 Process and Cruel and Unusual Punishment.” SAC at 9. The allegations in
11 support of the Third Cause of Action do not refer to any particular defendant
12 by name. Id. ¶¶ 34-40.

13 The Third Cause of Action appears to be based upon a claim that
14 “defendants” did not adequately respond to Plaintiff’s administrative
15 grievances. See SAC ¶ 36.⁴ The Ninth Circuit has held that inmates have no
16 constitutionally protected interest in a prison grievance procedure. See
17 Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (no liberty interest in
18 processing of appeals because there is no entitlement to a specific grievance
19 procedure); see also Mann v. Adams, 855, F.2d 639, 640 (9th Cir. 1988). Thus,
20 a plaintiff cannot assert a due process claim based solely on the handling of his
21 grievances. See McCoy v. Roe, 509 Fed. App’x 660 (9th Cir. 2013) (affirming
22 dismissal of claims arising from defendants’ processing of grievances).

23 Because Plaintiff has no federally protected right to a grievance
24 procedure, a due process claim based upon a failure to address grievances does
25 not state a claim against any defendant. Further, as the allegations in the third

26
27 ⁴ To the extent the Third Cause of Action asserts an Eighth Amendment claim, it
28 appears to add nothing to and be duplicative of the Second Cause of Action.

1 cause of action do not add anything to the allegations already found to be
2 insufficient as to Drs. Garikaoarki, Cho, Oh, Chin, and Lee and RN Navarro,
3 this claim is equally subject to dismissal as to those defendants.

4 **E. Fourth Cause of Action: Conspiracy**

5 In his fourth purported cause of action, Plaintiff concedes that some
6 defendants did “not physically participat[e] in the acts and omissions herein
7 alleged, including but not limited to the acts of cruel and unusual punishment
8 and denial of due process.” SAC ¶ 42. Yet Plaintiff alleges that the defendants
9 “conspired” and “aided and abetted” the “misconduct,” by, among other
10 things, “witnessing the immediate denial of medical treatment.” *Id.* The only
11 defendant actually named in the Fourth Cause of Action is Dr. Duong. *Id.*

12 A claim of civil conspiracy to violate civil rights requires the existence of
13 an agreement or a meeting of the minds to violate the Plaintiff’s constitutional
14 rights, and an actual deprivation of those rights. *Avalos v. Baca*, 596 F.3d 583,
15 592 (9th Cir. 2010). Plaintiff alleges no specific facts suggesting an agreement
16 or common objective among Defendants to violate his rights. *See Franklin v.*
17 *Fox*, 312 F.3d 423, 441 (9th Cir. 2001) (quoting *United Steel Workers of Am.*
18 *V. Phelps Dodge Corp.*, 865 F.2d 1539, 1541 (9th Cir. 1989) (“To be liable,
19 each participant in the conspiracy need not know the exact details of the plan,
20 but each participant must at least share the common objective of the
21 conspiracy.”). A plaintiff must state specific facts, not mere conclusory
22 statements, to support the existence of an alleged conspiracy. *Burns v. Cty. of*
23 *King*, 883 F.2d 819, 921 (9th Cir. 1989). Although pro se pleadings are
24 liberally construed, a liberal interpretation of a civil rights complaint may not
25 supply essential elements of the claim that were not initially pled. *Ivey v.*
26 *Board of Regents of Univ. of Alaska*, 673, F.2d 266, 268 (9th Cir. 1989).

27 The SAC fails to set forth essential, specific acts of each defendant that
28 support the existence of the claimed conspiracy. *Burns*, 883 F.2d at 821. These

1 allegations are insufficient and the claim is subject to dismissal.

2 **F. Fifth Cause of Action: Failure to Properly Train or Supervise**

3 Plaintiff alleges that “defendants” knowingly failed and refused to
4 properly hire, train, supervise, and discipline custodial and medical staff
5 personnel in order to provide Plaintiff with proper and timely medical
6 attention. SAC ¶ 45. Plaintiff asserts that these failures led to unnecessary and
7 wanton infliction of pain, suffering, and permanent physical injury in violation
8 of Plaintiff’s rights under the Eighth and Fourteenth Amendments. Id. Plaintiff
9 does not name specific Defendants in his claim for failure to supervise, train,
10 and discipline staff. See id.

11 Interpreting the SAC in the manner most favorable to Plaintiff, the only
12 defendants who could arguably be considered to have had supervisory liability
13 are Warden Borders and Dr. Farooq. As a result, the failure to train or
14 supervise claim fails as a matter of law as to the remaining defendants.

15 With respect to Warden Borders and Dr. Farooq, the Court has found
16 that the Second Cause of Action in the SAC, for deliberate indifference, passes
17 screening based in part upon Starr v. Baca, 652 F.3d at 1207-08, in which the
18 Ninth Circuit held (emphasis added):

19 A defendant may be held liable as a supervisor under § 1983
20 ‘if there exists either (1) his or her personal involvement in the
21 constitutional deprivation, or (2) a sufficient causal connection
22 between the supervisor’s wrongful conduct and the constitutional
23 violation.’ ‘[A] plaintiff must show the supervisor breached a duty
24 to plaintiff which was the proximate cause of the injury. The law
25 clearly allows actions against supervisors under section 1983 as
26 long as a sufficient causal connection is present and the plaintiff
27 was deprived under color of law of a federally secured right.’

28 ‘The requisite causal connection can be established . . . by

1 setting in motion a series of acts by others,' or by 'knowingly
2 refus[ing] to terminate a series of acts by others, which [the
3 supervisor] knew or reasonably should have known would cause
4 others to inflict a constitutional injury.' 'A supervisor can be liable
5 in his individual capacity for his own culpable action or inaction in
6 the training, supervision, or control of his subordinates; for his
7 acquiescence in the constitutional deprivation; or for conduct that
8 showed a reckless or callous indifference to the rights of others.'

9 Thus, as to Warden Borders and Dr. Farooq, the Fifth Cause of Action is
10 duplicative of the Second Cause of Action; as to all other defendants, it fails to
11 state a claim upon which relief can be granted and is subject to dismissal.

12 V.

13 CONCLUSION

14 The Complaint largely fails to state a claim upon which relief may be
15 granted and those insufficient claims are subject to dismissal. Because it is not
16 absolutely clear that the Complaint's deficiencies cannot be cured by
17 amendment, dismissal will be with leave to amend. Accordingly, the Court
18 provides Plaintiff the following options:

- 19 1. If Plaintiff desires to proceed only on the Second Cause of Action
20 only in the current Second Amended Complaint (Eighth
21 Amendment deliberate indifference to serious medical needs,
22 which includes as a factual predicate allegations of falsification of
23 records and improper training and/or supervision) and only
24 against defendants Dr. Duong, Dr. Farooq and Warden Borders,
25 Plaintiff need take no further steps. Instead, after 30 (thirty) days
26 have passed from the date of this Order, if the Court has not
27 received a Third Amended Complaint from Plaintiff as outlined in
28 option no. 2, below, the Court will direct the Clerk to issue

1 summonses on the Second Amended Complaint as to Dr. Duong,
2 Dr. Farooq and Warden Borders in their respective individual
3 capacities, and will commence the process of directing service of
4 those three defendants by the United State Marshal Service, with
5 Plaintiff's assistance;

6 OR

7 2. If Plaintiff wishes to assert claims against defendants other than
8 Dr. Duong, Dr. Farooq, and Warden Borders or pursue claims
9 other than the Second Cause of Action in the Second Amended
10 Complaint, Plaintiff must, within 30 (thirty) days of the date of
11 this Order, file a Third Amended Complaint ("TAC"), remedying
12 the deficiencies discussed above. Specifically, the SAC must
13 clearly identify each cause of action and identify which defendants
14 are named in each cause of action, and it must clearly and
15 succinctly describe what each defendant did or failed to do and the
16 damage or injury that resulted. The Court will again screen the
17 TAC after it is filed pursuant to 28 U.S.C. §§ 1915(e)(2) and
18 1915A. Any such TAC should bear the docket number assigned in
19 this case; be labeled "Third Amended Complaint"; and be
20 complete in and of itself without reference to the prior complaints
21 or any other pleading, attachment or document. The Clerk is
22 directed to send Plaintiff a blank Central District civil rights
23 complaint form, which Plaintiff is encouraged to use.

24 Dated: November 20, 2017

25 
26 _____
27 JOHN D. EARLY
28 United States Magistrate Judge