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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JAMES INGRAM,

11 Plaintiff,

No. 1:07-cv-00176 ALA P

12 vs.

13 MTA F. BREWER, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff James Ingram is a state prisoner proceeding pro se and in forma pauperis in this
17 civil rights actions pursuant to 42 U.S.C. § 1983. On June 26, 2007, plaintiff filed a first
18 amended complaint as directed by the court's May 17, 2007, order. That complaint alleges a
19 violation of plaintiff's constitutional rights by defendants who are employees of a governmental
20 entity.

21 I

22 Pursuant to 28 U.S.C. § 1915A(a), when the litigant is a prisoner, the court must screen
23 complaints brought against a governmental entity or officer or employee of a governmental
24 entity. The court must dismiss the complaint if the claims contained in it, even when read
25 broadly, are legally frivolous, malicious, fail to state a claim upon which relief may be granted,
26 or seek money damages from a defendant who is immune from such relief. 28 U.S.C. §
915(A)(b). A claim "is frivolous [if] it lacks an arguable basis either in law or in fact." *Neitzke*

1 v. *Williams*, 490 U.S. 319, 325 (1989). “At this stage of the litigation, [this Court] must accept
2 [Plaintiff’s] allegations as true.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). “A court
3 may dismiss a complaint only if it is clear that no relief could be granted under any set of facts
4 that could be proved consistent with the allegations.” *Id.*

5 “To sustain an action under section 1983, a plaintiff must show (1) that the conduct
6 complained of was committed by a person acting under color of state law; and (2) that the
7 conduct deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*,
8 466 F.3d 676, 689 (9th Cir. 2006).

9 II

10 Plaintiff’s first amended complaint alleges that defendant Brewer administered plaintiff
11 another inmates insulin causing plaintiff to become ill. First Amended Complaint at 3. Plaintiff
12 alleges that the “C/O’s and medical staff” denied plaintiff pain relief and attempted to encourage
13 plaintiff to “not pursue the issue.” *Id.*

14 ““The unnecessary and wanton infliction of pain upon incarcerated individuals under
15 color of law constitutes a violation of the Eight Amendment.”” *Toguchi v. Chung*, 391 F.3d
16 1051, 1056 (9th Cir. 2004) (quoting *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992)).
17 “A violation of the Eighth Amendment occurs when prison officials are deliberately indifferent
18 to a prisoner’s medical needs.” *Id.* at 1057.

19 “In the Ninth Circuit, the test for deliberate indifference consists of two parts.” *Jett v.*
20 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006). “First, the plaintiff must show a ‘serious medical
21 need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further
22 significant injury or the ‘unnecessary and wanton infliction of pain.’” *Id.* (quoting *McGuckin*,
23 974 F.2d at 1059). “Second, the plaintiff must show the defendant’s response to the need was
24 deliberately indifferent.” *Id.* A plaintiff can show a defendant’s response was deliberately
25 indifferent by demonstrating “(a) a purposeful act or failure to respond to a prisoner’s pain or
26 possible medical need and (b) harm caused by the indifference.” *Id.* “Indifference ‘may appear

1 when prison officials deny, delay or intentionally interfere with medical treatment, or it may be
2 shown by the way in which prison physicians provide medical care.” *Id.* (quoting *McGuckin*,
3 974 F.2d at 1059).

4 “A prison official acts with ‘deliberate indifference . . . only if [he or she] knows of and
5 disregards an excessive risk to inmate health and safety.” *Toguchi*, 391 F.3d 1057. “Under this
6 standard, the prison official must not only ‘be aware of facts from which the inference could be
7 drawn that a substantial risk of serious harm exists,’ but that person ‘must also draw the
8 inference.’” *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). “[D]eliberate
9 indifference to medical needs may be shown by circumstantial evidence when the facts are
10 sufficient to demonstrate that a defendant actually knew of a risk of harm.” *Id.* at 1057 n.4
11 (quoting *Lolli v. County of Orange*, 351 F.3d 410, 421 (9th Cir. 2003)).

12 Plaintiff’s first amended complaint does not allege that defendant Brewer purposely
13 failed to act or respond to plaintiff’s medical need. The actions of defendant Brewer appear at
14 worst negligent. Plaintiff alleges that “C/O’s and medical staff” failed to respond to plaintiff’s
15 pain, however plaintiff does not identify who those “staff” are. They do not appear to be
16 defendants Brewer, Stephens or Igbinsa. Therefore, plaintiff’s first amended complaint does
17 not state a colorable claim for relief and will be dismissed.

18 III

19 To proceed plaintiff must file a second amended complaint. Any amended complaint
20 must show that the federal court has jurisdiction and that plaintiff’s action is brought in the right
21 place, that plaintiff is entitled to relief if plaintiff’s allegations are true, and must contain a
22 request for particular relief. Plaintiff must identify as a defendant only persons who personally
23 participated in a substantial way in depriving plaintiff of a federal constitutional right. *Johnson*
24 *v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
25 constitutional right if he does an act, participates in another’s act or omits to perform an act he is
26 legally required to do that causes the alleged deprivation). If plaintiff contends he was the victim

1 of a conspiracy, he must identify the participants and allege their agreement to deprive him of a
2 specific federal constitutional right.

3 In an amended complaint, the allegations must be set forth in numbered paragraphs. FED.
4 R. CIV. P. 10(B). Plaintiff may join multiple claims if they are all against a single defendant.
5 FED. R. CIV. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
6 occurrences, the claims must be set forth in separate paragraphs. FED. R. CIV. P. 10(b).

7 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d
8 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any
9 heightened pleading standard in cases other than those governed by Rule 9(b).”); FED. R. CIV. P.
10 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading).

11 Plaintiff’s claims must be set forth in short and plain terms, simply, concisely and
12 directly. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting
13 point of a simplified pleading system, which was adopted to focus litigation on the merits of a
14 claim.”); FED. R. CIV. P. 8.

15 Plaintiff must eliminate from plaintiff’s pleading all preambles, introductions, argument,
16 speeches, explanations, stories, griping, vouching, evidence, attempts to negate possible
17 defenses, summaries, and the like. *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996)
18 (affirming dismissal of § 1983 complaint for violation of Rule 8 after warning); *see Crawford-El*
19 *v. Britton*, 523 U.S. 574, 597 (1998) (reiterating that “firm application of the Federal Rules of
20 Civil Procedure is fully warranted” in prisoner cases).

21 A district court must construe pro se pleading “liberally” to determine if it states a claim
22 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give a plaintiff an
23 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). However,
24 the “[f]actual allegations must be enough to raise a right to relief above the speculative level on
25 the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Bell*
26 *Atlantic Corporation v. Twombly*, ___ U.S. ___, 127 S.Ct. 1955, 1965 (2007) (citations omitted).

1 The court (and defendants) should be able to read and understand plaintiff's pleading
2 within minutes. *McHenry*, 84 F.3d at 1177. A long, rambling pleading, including many
3 defendants with unexplained, tenuous or implausible connection to the alleged constitutional
4 injury or joining a series of unrelated claims against many defendants very likely will result in
5 delaying the review required by 28 U.S.C. § 1915 and an order dismissing plaintiff's action
6 pursuant to FED. R. CIV. P. 41 for violation of these instructions.

7 An amended complaint must be complete in itself without reference to any prior
8 pleading. Local Rule 15-220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff
9 files an amended complaint, the original pleading is superseded.

10 Plaintiff is admonished that by signing an amended complaint he certifies he has made
11 reasonable inquiry and has evidentiary support for his allegations and that for violation of this
12 rule the court may impose sanctions sufficient to deter repetition by plaintiff or others. FED. R.
13 CIV. P. 11. Prison rules require plaintiff to obey all laws, including this one, and plaintiff may
14 be punished by prison authorities for violation of the court's rules and orders. *See* 15 CAL.
15 ADMIN. CODE § 3005.

16 A prisoner may bring no § 1983 action until he has exhausted such administrative
17 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*
18 *v. Churner*, 532 U.S. 731, 741 (2001). Plaintiff is further admonished that by signing an
19 amended complaint he certifies his claims are warranted by existing law, including the law that
20 he exhaust administrative remedies, and that for violation of this rule plaintiff risks dismissal of
21 his action.

22 IV

23 Therefore, IT IS HEREBY ORDERED that:

- 24 1. Plaintiff's June 26, 2007, first amended complaint is dismissed; and
- 25 2. Plaintiff's is granted thirty-five (35) days from the date of this order to file a
- 26 second amended complaint. Failure to file a second amended complaint may result in dismissal.

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2 Dated: February 4, 2008

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/s/ Arthur Alarcón
UNITED STATES CIRCUIT JUDGE
Sitting by Designation

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