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

10 MARCUS J. BARNHARDT,

11 Plaintiff,

No. 1:07-CV-0539 ALA P

12 vs.

13 JAMES TILTON, et al.,

14 Defendants.

ORDER

15 \_\_\_\_\_/  
16 Plaintiff Marcus Barnhardt is a state prisoner proceeding pro se and in forma pauperis in  
17 this civil rights actions pursuant to 42 U.S.C. § 1983. On April 6, 2007, plaintiff filed a  
18 complaint alleging a violation of plaintiff's constitutional rights by defendants. Review of that  
19 complaint finds that defendants are employees of a governmental entity.

20 **I**

21 Pursuant to 28 U.S.C. § 1915A(a), when the litigant is a prisoner, the court must screen  
22 complaints brought against a governmental entity or officer or employee of a governmental  
23 entity. The court must dismiss the complaint if the claims contained in it, even when read  
24 broadly, are legally frivolous, malicious, fail to state a claim upon which relief may be granted,  
25 or seek money damages from a defendant who is immune from such relief. 28 U.S.C. §  
26 915(A)(b). A claim "is frivolous [if] it lacks an arguable basis either in law or in fact." *Neitzke*  
*v. Williams*, 490 U.S. 319, 325 (1989). "At this stage of the litigation, [this Court] must accept

1 [Plaintiff's] allegations as true." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). "A court  
2 may dismiss a complaint only if it is clear that no relief could be granted under any set of facts  
3 that could be proved consistent with the allegations." *Id.*

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

## 8 II

9 Plaintiff alleges that a former doctor ordered plaintiff, who is an insulin dependent  
10 diabetic, have an insulin pump implanted and that plaintiff be housed in a medical facility.  
11 Complaint at 4. Named as defendants are James Tilton, Secretary of the California Department  
12 of Corrections, James Yates, Warden of Pleasant Valley State Prison, Doctor Igbinosa, Chief  
13 Medical Officer of Pleasant Valley State Prison, and Doctor Bryan Hui Phi, a contracted  
14 physician. *Id.* at 2-3

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

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

1 possible medical need and (b) harm caused by the indifference.” *Id.* “Indifference ‘may appear  
2 when prison officials deny, delay or intentionally interfere with medical treatment, or it may be  
3 shown by the way in which prison physicians provide medical care.’” *Id.* (quoting *McGuckin*,  
4 974 F.2d at 1059).

5 “A prison official acts with ‘deliberate indifference . . . only if [he or she] knows of and  
6 disregards an excessive risk to inmate health and safety.” *Toguchi*, 391 F.3d 1057. “Under this  
7 standard, the prison official must not only ‘be aware of facts from which the inference could be  
8 drawn that a substantial risk of serious harm exists,’ but that person ‘must also draw the  
9 inference.’” *Id.* (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). “[D]eliberate  
10 indifference to medical needs may be shown by circumstantial evidence when the facts are  
11 sufficient to demonstrate that a defendant actually knew of a risk of harm.” *Id.* at 1057 n.4  
12 (quoting *Lolli v. County of Orange*, 351 F.3d 410, 421 (9th Cir. 2003)). Additionally, it is  
13 established that deliberate indifference is found when a prison official “intentionally interfer[s]  
14 with... treatment once prescribed.” *Wakefield v. Thompson*, 177 F.3d 1160, 1165(9th Cir. 1999)  
15 (citing *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976).

16 Plaintiff’s complaint alleges that he “was supposed to get an insulin pump implanted and  
17 be housed in a Medical Facility.” Complaint at 4. Plaintiff also alleges that “[d]efendants have  
18 not complied with doctor’s orders and the [c]ourts intention.” *Id.* While plaintiff’s allegations  
19 may support a claim, plaintiff has failed to identify the actions of any single defendant. As such,  
20 plaintiff’s allegations are too vague to support a claim. Plaintiff’s complaint will therefore be  
21 dismissed.

### 22 III

23 To proceed plaintiff must file a first amended complaint. Any amended complaint must  
24 show that the federal court has jurisdiction and that plaintiff’s action is brought in the right place,  
25 that plaintiff is entitled to relief if plaintiff’s allegations are true, and must contain a request for  
26 particular relief. Plaintiff must identify as a defendant only persons who personally participated

1 in a substantial way in depriving plaintiff of a federal constitutional right. *Johnson v. Duffy*, 588  
2 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a constitutional  
3 right if he does an act, participates in another’s act or omits to perform an act he is legally  
4 required to do that causes the alleged deprivation). If plaintiff contends he was the victim of a  
5 conspiracy, he must identify the participants and allege their agreement to deprive him of a  
6 specific federal constitutional right.

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

11 The federal rules contemplate brevity. *See Galbraith v. County of Santa Clara*, 307 F.3d  
12 1119, 1125 (9th Cir. 2002) (noting that “nearly all of the circuits have now disapproved any  
13 heightened pleading standard in cases other than those governed by Rule 9(b).”); FED. R. CIV. P.  
14 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading).

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

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

25 A district court must construe pro se pleading “liberally” to determine if it states a claim  
26 and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give a plaintiff an

1 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). However,  
2 the “[f]actual allegations must be enough to raise a right to relief above the speculative level on  
3 the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Bell*  
4 *Atlantic Corporation v. Twombly*, \_\_\_ U.S. \_\_\_, 127 S.Ct. 1995, 1965 (2007) (citations omitted).

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

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

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

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

#### 26 IV

1           Therefore, IT IS HEREBY ORDERED that:

2                     1. Plaintiff's April 6, 2007, complaint is dismissed; and

3                     2. Plaintiff's is granted thirty-five (35) days from the date of this order to file a  
4 first amended complaint. Failure to file a first amended complaint may result in dismissal.

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6       Dated: February 4, 2008

7                                     /s/ Arthur Alarcón  
8                                     UNITED STATES CIRCUIT JUDGE  
9                                     Sitting by Designation  
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