

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

MOODY WOODROW TANKSLEY,

CASE NO. 1:08-cv-00093-OWW-GBC PC

Plaintiff,

ORDER DISMISSING COMPLAINT, WITH  
LEAVE TO AMEND, FOR FAILURE TO  
STATE A CLAIM

v.

BLACKWELL, M.D., et al.,

(Doc. 11)

Defendants.

THIRTY-DAY DEADLINE

**I. Screening Requirement**

Plaintiff Moody Woodrow Tanksley ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action was filed on January 18, 2010. (Doc. 1.) On July 23, 2009, the complaint was screened by the Magistrate Judge and dismissed, with leave to amend, for failure to state a claim. (Doc. 9.) Currently before the Court is the first amended complaint, filed August 19, 2009. (Doc. 11.)

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that "fails to state a claim on which relief may be granted," or that "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

In determining whether a complaint states a claim, the Court looks to the pleading standard under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).

1 “[T]he pleading standard Rule 8 announces does not require ‘detailed factual allegations,’ but it  
2 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Ashcroft v.  
3 Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555  
4 (2007)).

5 Under section 1983, Plaintiff must demonstrate that each defendant personally participated  
6 in the deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires  
7 the presentation of factual allegations sufficient to state a plausible claim for relief. Iqbal, 129 S. Ct.  
8 at 1949-50; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). “[A] complaint [that]  
9 pleads facts that are ‘merely consistent with’ a defendant’s liability . . . ‘stops short of the line  
10 between possibility and plausibility of entitlement to relief.’” Iqbal, 129 S. Ct. at 1949 (quoting  
11 Twombly, 550 U.S. at 557). Further, although a court must accept as true all factual allegations  
12 contained in a complaint, a court need not accept a plaintiff’s legal conclusions as true. Iqbal, 129  
13 S. Ct. at 1949. “Threadbare recitals of the elements of a cause of action, supported by mere  
14 conclusory statements, do not suffice.” Id. (quoting Twombly, 550 U.S. at 555).

## 15 **II. Complaint Allegations**

16 Plaintiff is currently housed at Atascadero State Hospital. On October 12, 2007, while  
17 housed at Coalinga State Hospital, Plaintiff alleges that prison officers and medical staff thought he  
18 was lying about having blood clots. Plaintiff was sent to the Coalinga Medical Clinic for several  
19 days due to blood clots in his legs. He alleges the Medical Clinic refused to treat the blood clots.  
20 On December 10, 2007, Plaintiff saw Defendant DePaulo. Plaintiff states that he was in the hospital  
21 from December 17, 2007 to December 10, 2007. On January 12, 2008, prison staff still thought that  
22 he was lying about the blood clots in his legs and wanted him dead. On an unknown date, Plaintiff  
23 was placed at Avenal State Prison. (Doc. 11, Amend. Comp., § IV.)

24 Plaintiff brings suit against Defendants Blackwell, DePaulo, Thompson, Murgallis,  
25 Carpenter, Seal, Scribner, and Lopez in their individual and official capacities, seeking four million  
26 dollars from each defendant. (Id., § V.)

## 27 **III. Discussion**

28 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate

1 must show “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d 1091, 1096  
2 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two part test for  
3 deliberate indifference requires the plaintiff to show (1) “a ‘serious medical need’ by demonstrating  
4 that failure to treat a prisoner’s condition could result in further significant injury or the ‘unnecessary  
5 and wanton infliction of pain,’” and (2) “the defendant’s response to the need was deliberately  
6 indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991),  
7 overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc)).

8 Deliberate indifference is shown where there was “a purposeful act or failure to respond to  
9 a prisoner’s pain or possible medical need” and the indifference caused harm. Jett, 439 F.3d at 1096.  
10 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir.  
11 2004). The prison official must be aware of facts from which he could make an inference that “a  
12 substantial risk of serious harm exists” and he must make the inference. Farmer v. Brennan, 511  
13 U.S. 825, 837 (1994).

14 Despite having previously been provided with the legal standards that apply to his claim,  
15 Plaintiff fails to allege facts that any individual named defendant committed any act or failed to act  
16 to provide him with medical care. Iqbal, 129 S. Ct. at 1948. Additionally, Plaintiff has not set forth  
17 how he was harmed by any act or failure to act. Jett, 439 F.3d at 1096. Plaintiff cannot state a claim  
18 by merely stating that medical records exist. Plaintiff has failed to state a claim against any named  
19 defendant. The Court will grant Plaintiff one final opportunity to amend the complaint to correct the  
20 deficiencies described above. Plaintiff is again advised that to state a claim he must indicate what  
21 each individual defendant did to violate his constitutional rights.

#### 22 **IV. Conclusion and Order**

23 For the reasons stated, Plaintiff’s complaint does not state a cognizable claim for relief for  
24 a violation of his constitutional rights. Plaintiff is granted one final opportunity to file an amended  
25 complaint within thirty days. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may  
26 not change the nature of this suit by adding new, unrelated claims in his amended complaint.  
27 George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

28 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each

1 named defendant did that led to the deprivation of Plaintiff's constitutional or other federal rights,  
2 Iqbal, 129 S. Ct. at 1948-49. "The inquiry into causation must be individualized and focus on the  
3 duties and responsibilities of each individual defendant whose acts or omissions are alleged to have  
4 caused a constitutional deprivation." Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although  
5 accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the  
6 speculative level . . . ." Twombly, 550 U.S. at 555 (citations omitted).

7 Finally, an amended complaint supercedes the original complaint, Forsyth v. Humana, Inc.,  
8 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must  
9 be "complete in itself without reference to the prior or superceded pleading," Local Rule 220. "All  
10 causes of action alleged in an original complaint which are not alleged in an amended complaint are  
11 waived." King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th  
12 Cir. 1981)); accord Forsyth, 114 F.3d at 1474.

13 Based on the foregoing, it is HEREBY ORDERED that:

- 14 1. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 15 2. Plaintiff's complaint, filed August 19, 2009, is dismissed for failure to state a claim  
16 upon which relief may be granted under section 1983;
- 17 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
18 amended complaint; and
- 19 4. If Plaintiff fails to file an amended complaint in compliance with this order, this  
20 action will be dismissed, with prejudice, for failure to state a claim.

21 IT IS SO ORDERED.

22 Dated: November 10, 2010

  
UNITED STATES MAGISTRATE JUDGE