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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

David Knapp,	)	No. CV 1-08-780-ROS
Plaintiff,	)	<b>ORDER</b>
vs.	)	
California Department of Corrections and Rehabilitation, et al.,	)	
Defendants.	)	

Plaintiff David Knapp is confined in the California Substance Abuse Treatment Facility and State Prison in Corcoran, California. In a January 16, 2009 Order, the Court dismissed Plaintiff's Complaint because he had failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint that cured the deficiencies identified in the Order.

On February 13, 2009, Plaintiff filed his First Amended Complaint (Doc. #8). In a March 19, 2009 Order, the Court noted that Plaintiff's First Amended Complaint was unsigned and gave him time to submit a completed and signed Certificate, using the Certificate form included with the Order, certifying that Plaintiff's signature on the Certificate would serve as an original signature on his First Amended Complaint for the purposes of Rule 7-131(b) of the Local Rules of Civil Procedure and Rule 11 of the Federal Rules of Civil Procedure. On June 26, 2009, Plaintiff submitted a signed Certificate.

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1    **I.     Statutory Screening of Prisoner Complaints**

2           The Court is required to screen complaints brought by prisoners seeking relief against  
3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
6 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
7 28 U.S.C. § 1915A(b)(1), (2).

8           A pleading must contain a “short and plain statement of the claim *showing* that the  
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not  
10 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-  
11 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).  
12 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
13 statements, do not suffice.” Id.

14           “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
15 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,  
16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content  
17 that allows the court to draw the reasonable inference that the defendant is liable for the  
18 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for  
19 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
20 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual  
21 allegations may be consistent with a constitutional claim, a court must assess whether there  
22 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

23    **II.     First Amended Complaint**

24           In his three-count First Amended Complaint, Plaintiff sues the Defendants Medical  
25 Healthcare Receiver J. Clark Kelso, “Chief Inmate Appeals Branch” N. Grannis, Chief  
26 Medical Officer Dr. A. Enenmoh, Dr. K. Lee, Correctional Health Services Administrator  
27 II G. Martinez, Doe Head Registered Nurse, Doe Registered Nurse, Doe Head Pharmacist,  
28 and Doe Pharmacist.

1 Plaintiff alleges that he takes daily medication to control and alleviate severe and  
2 excruciating pain caused by his chronic medical conditions of Rheumatoid Arthritis,  
3 Osteoporosis, and herniated discs. He claims that his medical conditions become crippling  
4 if he is “forced to go without” his prescribed medications and that he has become suicidal  
5 when taken off his prescribed pain medication. He asserts that Defendants have repeatedly  
6 denied, delayed, and intentionally interfered with his medical treatment and prescribed  
7 medications. He also contends that Defendants have subjected him to hostility and abuse in  
8 “apparent retaliation for plaintiff’s efforts to secure proper medication, and treatment,” by  
9 withholding his medications for weeks and forcing him to wait for outdoors for hours for  
10 medical treatment and then informing Plaintiff that medical personnel cannot see him  
11 because they do not have his file.

12 In Counts One and Two, Plaintiff alleges that Defendants have been deliberately  
13 indifferent to his serious medical needs in violation of the Eighth and Fourteenth  
14 Amendments. In Count Three, he asserts, under State law, claims of general and medical  
15 negligence.

16 Plaintiff seeks a jury trial, declaratory relief, a preliminary injunction, monetary  
17 damages, and his costs of suit.

18 **III. Duplicative Claim**

19 Counts One and Two are duplicative claims of deliberate indifference by the same  
20 Defendants for the same conduct. Count Two simply adds a sentence about Defendants  
21 denying, delaying, and intentionally interfering with his prescribed medications and  
22 treatment. The Court will dismiss Count One as duplicative of the more expansive  
23 allegations in Count Two.

24 **IV. Claims for Which an Answer Will be Required**

25 Liberally construed, Plaintiff has stated claims in Counts Two and Three, and the  
26 Court will required Defendants to answer those Counts.

27 The Court will not direct that service be made on the four Doe Defendants at this time.  
28 The Court is unable to identify these individuals, and, as a practical matter, it is virtually

1 impossible for the United States Marshal to serve a summons and complaint upon unknown  
2 persons. However, the Court will not dismiss the claims against these Defendants at this  
3 time. See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999) (where identity of  
4 defendants is unknown prior to filing of complaint, plaintiff should be given an opportunity  
5 through discovery to identify the unknown defendants, unless it is clear that discovery would  
6 not uncover the identities or that the complaint would be dismissed on other grounds).

7 Plaintiff may use the discovery process to obtain the names of the four Doe  
8 Defendants. If Plaintiff later discovers the identities of these Defendants, Plaintiff should  
9 seek to amend his First Amended Complaint to name them. Pursuant to Rule 15 of the  
10 Federal Rules of Civil Procedure, a party may amend the party's pleading once as a matter  
11 of course at any time before a responsive pleading is served. Otherwise, a party may amend  
12 the party's pleading only by leave of court or by written consent of the adverse party.

### 13 **V. Preliminary Injunction**

14 In his First Amended Complaint, Plaintiff seeks a preliminary injunction. The Court  
15 will deny the request, without prejudice, because Plaintiff has failed to demonstrate at this  
16 time that he is likely to suffer irreparable harm in the absence of injunctive relief. See Winter  
17 v. Natural Resources Defense Council, Inc., 129 S. Ct. 365, 374 (2008) (to obtain a  
18 preliminary injunction, the moving party must show "that he is likely to succeed on the  
19 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that  
20 the balance of equities tips in his favor, and that an injunction is in the public interest"); see  
21 also Environmental Council of Sacramento v. Slater, 184 F. Supp. 2d 1016, 1027 (E.D. Cal.  
22 2000) (the moving party has the burden of proof on each element of the test).

### 23 **VI. Warnings**

#### 24 **A. Address Changes**

25 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
26 83-182(f) and 83-183(b) of the Local Rules of Civil Procedure. Plaintiff must not include  
27 a motion for other relief with a notice of change of address. Failure to comply may result in  
28 dismissal of this action.

1           **B.     Copies**

2           Plaintiff must submit an additional copy of every filing for use by the Court. See  
3 LRCiv 5-133(d)(2). Failure to comply may result in the filing being stricken without further  
4 notice to Plaintiff.

5           **C.     Possible Dismissal**

6           If Plaintiff fails to timely comply with every provision of this Order, including these  
7 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,  
8 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
9 comply with any order of the Court).

10 **IT IS ORDERED:**

11           (1)     Count One is **dismissed as duplicative**.

12           (2)     Defendants Kelso, Grannis, Enenmoh, Lee, and Martinez must answer Counts  
13 Two and Three of the First Amended Complaint.

14           (3)     Plaintiff's request for a preliminary injunction, contained in the First Amended  
15 Complaint, is **denied without prejudice**.

16           (4)     The Clerk of Court must send Plaintiff a service packet including the First  
17 Amended Complaint (Doc. #8), the signature Certificate (Doc. #10), this Order, a Notice of  
18 Submission of Documents form, an instruction sheet, and copies of summons and USM-285  
19 forms for Defendants Kelso, Grannis, Enenmoh, Lee, and Martinez.

20           (5)     Within **30 days** of the date of filing of this Order, Plaintiff must complete and  
21 return to the Clerk of Court the Notice of Submission of Documents. Plaintiff must submit  
22 with the Notice of Submission of Documents: a copy of the First Amended Complaint for  
23 each Defendant, a copy of the signature Certificate for each Defendant, a copy of this Order  
24 for each Defendant, a completed summons for each Defendant, and a completed USM-285  
25 for each Defendant.


26           (6)     Plaintiff must not attempt service on Defendants and must not request waiver  
27 of service. Once the Clerk of Court has received the Notice of Submission of Documents  
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1 and the required documents, the Court will direct the United States Marshal to seek waiver  
2 of service from each Defendant or serve each Defendant.

3 (7) **If Plaintiff fails to return the Notice of Submission of Documents and the**  
4 **required documents within 30 days of the date of filing of this Order, the Clerk of**  
5 **Court must, without further notice, enter a judgment of dismissal of this action without**  
6 **prejudice. See Fed. R. Civ. P. 41(b).**

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DATED this 14th day of August, 2009.

  
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Roslyn O. Silver  
United States District Judge