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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TODD KINNAMON,)	1:13cv00109 DLB PC
)	
Plaintiff,)	ORDER DISMISSING COMPLAINT
)	WITH LEAVE TO AMEND
vs.)	
)	THIRTY-DAY DEADLINE
CDC, et al.,)	
)	
Defendants.)	

Plaintiff Todd Kinnamon, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on January 24, 2013. He names the California Department of Corrections and Rehabilitation (“CDCR”), California State Prison, Corcoran (“CSP”), CSP Warden Susan Hubbard, the CSP Medical Department, Chief Medical Officer Wang and R.N. Soto as Defendants.¹

A. LEGAL STANDARD

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

¹ On March 20, 2013, Plaintiff consented to the jurisdiction of the United States Magistrate Judge for all purposes.

1 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
2 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
3 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
4 paid, the court shall dismiss the case at any time if the court determines that . . . the action or
5 appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C.
6 § 1915(e)(2)(B)(ii).

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8 A complaint 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). Detailed factual allegations are not
10 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
11 conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (citing
12 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set forth “sufficient
13 factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” Id. (quoting
14 Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal conclusions are
15 not. Id.

16 To state a claim, Plaintiff must demonstrate that each defendant personally participated in
17 the deprivation of his rights. Id. at 1949. This requires the presentation of factual allegations
18 sufficient to state a plausible claim for relief. Iqbal, 129 S.Ct. at 1949-50; Moss v. U.S. Secret
19 Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere possibility of misconduct falls short of
20 meeting this plausibility standard. Iqbal, 129 S.Ct. at 1949-50; Moss, 572 F.3d at 969.

21 **B. SUMMARY OF PLAINTIFF’S ALLEGATIONS**

22 Plaintiff is currently incarcerated at the Richard J. Donovan Correctional Facility in San
23 Diego, California. Based on the named Defendants, it appears that the events complained of
24 occurred while Plaintiff was housed at CSP.
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1 Plaintiff's complaint is brief. He states that he fell into a man hole on the prison yard
2 while he was using his walker to get his medication. Plaintiff contends that this caused serious
3 injury and he is now confined to a wheelchair because of the fall.

4 **C. ANALYSIS**

5 1. Pleading Requirements

6 As explained above, a complaint must contain "a short and plain statement of the claim
7 showing that the pleader is entitled to relief" Fed. R. Civ. P. 8(a)(2). Detailed factual
8 allegations are not required, but "[t]hreadbare recitals of the elements of a cause of action,
9 supported by mere conclusory statements, do not suffice." Ashcroft v. Iqbal, 129 S. Ct. 1937,
10 1949 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
11 forth "sufficient factual matter, accepted as true, to 'state a claim that is plausible on its face.'" Id.
12 (quoting Twombly, 550 U.S. at 555). While factual allegations are accepted as true, legal
13 conclusions are not. Id.

14 Here, Plaintiff's factual allegations are contained in a few sentences. However, he fails
15 to allege any facts against the named Defendants and therefore fails to link any Defendant to any
16 alleged violation. His complaint is also too brief to give any Defendant fair notice of the claim
17 against them. "Specific facts are not necessary; the statement need only "give the **defendant**
18 **fair notice** of what the claim is and the grounds upon which it rests.'" Erickson v. Pardus,
19 551 U.S. 89, 93 (2007) (citations omitted) (emphasis added).

20 Plaintiff's complaint therefore fails to meet the pleading requirement of Rule 8. He
21 includes no factual context, such as location and date, within which to evaluate his claim.
22 Plaintiff will be allowed to amend his complaint pursuant to the standards set forth below.

23 2. Eighth Amendment Conditions of Confinement

24 The Eighth Amendment's prohibition against cruel and unusual punishment protects
25 prisoners not only from inhumane methods of punishment but also from inhumane conditions of
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1 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.
2 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347,
3 101 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may be, and
4 often are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of
5 pain. Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted).
6 Thus, conditions which are devoid of legitimate penological purpose or contrary to evolving
7 standards of decency that mark the progress of a maturing society violate the Eighth
8 Amendment. Morgan, 465 F.3d at 1045 (quotation marks and citations omitted); Hope v. Pelzer,
9 536 U.S. 730, 737, 122 S.Ct. 2508 (2002); Rhodes, 452 U.S. at 346.

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11 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,
12 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th
13 Cir. 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains
14 while in prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks
15 omitted). To maintain an Eighth Amendment claim, a prisoner must show that prison officials
16 were deliberately indifferent to a substantial risk of harm to his health or safety. E.g., Farmer,
17 511 U.S. at 847; Thomas v. Ponder, 611 F.3d 1144, 1150-51 (9th Cir. 2010); Foster v. Runnels,
18 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan, 465 F.3d at 1045; Johnson, 217 F.3d at 731;
19 Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

20 21 3. Eighth Amendment Deliberate Indifference

22 For Eighth Amendment claims arising out of medical care in prison, Plaintiff “must show
23 (1) a serious medical need by demonstrating that failure to treat [his] condition could result in
24 further significant injury or the unnecessary and wanton infliction of pain,” and (2) that “the
25 defendant’s response to the need was deliberately indifferent.” Wilhelm v. Rotman, 680 F.3d
26 1113, 1122 (citing Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference
27 is shown by “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical
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1 need, and (b) harm caused by the indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d
2 at 1096). The requisite state of mind is one of subjective recklessness, which entails more than
3 ordinary lack of due care. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012) (citation and
4 quotation marks omitted); Wilhelm, 680 F.3d at 1122.

5 4. Defendants CDCR, Corcoran State Prison and Corcoran Medical Department

6 The Eleventh Amendment erects a general bar against federal lawsuits brought against
7 the state. Wolfson v. Brammer, 616 F.3d 1045, 1065-66 (9th Cir. 2010) (citation and quotation
8 marks omitted). While “[t]he Eleventh Amendment does not bar suits against a state official for
9 prospective relief,” Wolfson, 616 F.3d at 1065-66, suits against the state or its agencies are
10 barred absolutely, regardless of the form of relief sought, e.g., Pennhurst State School & Hosp. v.
11 Halderman, 465 U.S. 89, 100, 104 S.Ct. 900 (1984); Buckwalter v. Nevada Bd. of Medical
12 Examiners, 678 F.3d 737, 740 n.1 (9th Cir. 2012).

13 Therefore, Plaintiff may not maintain a claim against CDCR, CSP or the CSP Medical
14 Department.

15 **D. CONCLUSION AND ORDER**

16 Plaintiff’s complaint fails to state a claim under section 1983. The Court will provide
17 Plaintiff with one opportunity to file an amended complaint, if he believes in good faith he can
18 cure the deficiency identified above. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll
19 v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this
20 suit by adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605,
21 607 (7th Cir. 2007) (no “buckshot” complaints).

22 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
23 each named defendant did that led to the deprivation of Plaintiff’s constitutional rights, Iqbal,
24 129 S.Ct. at 1948-49. Although accepted as true, the “[f]actual allegations must be [sufficient] to

1 raise a right to relief above the speculative level. . . .” Twombly, 550 U.S. at 555 (citations
2 omitted).

3 Further, Plaintiff is notified that his amended complaint supersedes the original
4 complaint, Lacey v. Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it
5 must be “complete in itself without reference to the prior or superseded pleading,” Local Rule
6 220.

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

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- 9 1. The Clerk’s Office shall send Plaintiff a complaint form;
 - 10 2. Plaintiff’s complaint is dismissed for failure to state a claim upon which relief
11 may be granted under section 1983;
 - 12 3. Within thirty (30) days from the date of service of this order, Plaintiff shall file an
13 amended complaint; and
 - 14 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
15 action will be dismissed, with prejudice, for failure to state a claim under section 1983.

16
17 IT IS SO ORDERED.

18 Dated: September 5, 2013

/s/ Dennis L. Beck
19 UNITED STATES MAGISTRATE JUDGE