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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ARCHIE CRANFORD,

Plaintiff,

v.

SAMANTHA PERRYMAN, et al.,

Defendants.

CASE NO. 1:13-cv-00581-MJS (PC)

ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND

(ECF No. 1)

AMENDED COMPLAINT DUE WITHIN
THIRTY (30) DAYS

SCREENING ORDER

I. PROCEDURAL HISTORY

On April 22, 2013, Plaintiff Archie Cranford, a civil detainee proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983. (ECF No. 1.) Plaintiff has consented to Magistrate Judge jurisdiction. (ECF No. 4.) His Complaint is now before the Court for screening.

II. SCREENING REQUIREMENT

Pursuant to 28 U.S.C. § 1915(e)(2), the Court must conduct an initial review of the

1 Complaint for sufficiency to state a claim. The Court must dismiss a complaint or portion
2 thereof if it determines that the action has raised claims that are legally “frivolous or
3 malicious,” “fails to state a claim upon which relief may be granted,” or that seek monetary
4 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B).
5 “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court
6 shall dismiss the case at any time if the court determines that . . . the action or appeal . .
7 . fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

9 Section 1983 “provides a cause of action for the ‘deprivation of any rights, privileges,
10 or immunities secured by the Constitution and laws’ of the United States.” Wilder v.
11 Virginia Hosp. Ass’n, 496 U.S. 498, 508 (1990) (quoting 42 U.S.C. § 1983). Section 1983
12 is not itself a source of substantive rights, but merely provides a method for vindicating
13 federal rights conferred elsewhere. Graham v. Connor, 490 U.S. 386, 393-94 (1989).

15 **III. SUMMARY OF COMPLAINT**

16 The Complaint identifies the following individuals as Defendants: (1) Samantha
17 Perryman; (2) Senait Endile; and (3) Stefeni Vally.

18 Plaintiff alleges the following:

19 On February 21, 2013, Plaintiff approached the unit two medication room window
20 at Coalinga State Hospital to receive his prescription. When Defendant Endile observed
21 it was Plaintiff approaching, she picked up an unknown pill off of the floor and placed it
22 alongside Plaintiff’s medication in a paper cup. She instructed Plaintiff to swallow all of the
23 pills at once. Plaintiff complied without suspicion because medication had been dispensed
24 in this manner before. Approximately forty-five minutes later Plaintiff became flushed, his
25 vision was impaired, and his heart rate accelerated. (Compl. at 3.)
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1 Plaintiff received medical attention and it was confirmed that his heart rate was
2 dangerously high. He asked to see Defendants Perryman and Vally. Plaintiff was told that
3 Perryman was in a meeting and Vally was in the patient dining room. Plaintiff made it to
4 the dining room with extreme difficulty and told Vally what had happened. She replied,
5 “what do you want [sic] me to do about it[?]” (Compl. at 4.) Eventually Perryman became
6 aware of the incident but failed to respond within the allotted time. (Id.)
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8 **IV. ANALYSIS**

9 **A. Section 1983**

10 To state a claim under Section 1983, a plaintiff must allege two essential elements:
11 (1) that a right secured by the Constitution or laws of the United States was violated and
12 (2) that the alleged violation was committed by a person acting under the color of state law.
13 See West v. Atkins, 487 U.S. 42, 48 (1988); Ketchum v. Alameda Cnty., 811 F.2d 1243,
14 1245 (9th Cir. 1987).
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16 A complaint must contain “a short and plain statement of the claim showing that the
17 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are
18 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by
19 mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949
20 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Plaintiff must set
21 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its
22 face.’” Id. Facial plausibility demands more than the mere possibility that a defendant
23 committed misconduct and, while factual allegations are accepted as true, legal
24 conclusions are not. Id. at 1949-50.
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1 **B. Fourteenth Amendment**

2 As a civil detainee, Plaintiff's right to medical care is protected by the substantive
3 component of the Due Process Clause of the Fourteenth Amendment. See *Youngberg v.*
4 *Romeo*, 457 U.S. 307, 315 (1982). Under this provision of the Constitution, Plaintiff is
5 "entitled to more considerate treatment and conditions of confinement than criminals
6 whose conditions of confinement are designed to punish." *Jones v. Blanas*, 393 F.3d 918,
7 931 (9th Cir. 2004) (quoting *Youngberg*, 457 U.S. at 321–22); cf. *Clouthier v. County of*
8 *Contra Costa*, 591 F.3d 1232, 1243–44 (9th Cir. 2010) (pretrial detainees, who are
9 confined to ensure their presence at trial and are therefore not similarly situated to those
10 civilly committed, are afforded only those protections provided by the Eighth Amendment).
11 Thus, to avoid liability, Defendants' decisions must be supported by "professional
12 judgment." *Youngberg*, 457 U.S. at 321. A defendant fails to use professional judgment
13 when his or her decision is "such a substantial departure from accepted professional
14 judgment, practice, or standards as to demonstrate that [he or she] did not base [his or her]
15 decision on such a judgment." *Youngberg*, 457 U.S. at 323.

16 In determining whether a defendant has met his or her constitutional obligations,
17 decisions made by the appropriate professional are entitled to a presumption of
18 correctness. *Youngberg*, 457 U.S. at 324. "[T]he Constitution only requires that the courts
19 make certain that professional judgment in fact was exercised. It is not appropriate for the
20 courts to specify which of several professionally acceptable choices should have been
21 made." *Id.* at 321. Liability will be imposed only when the medical decision "is such a
22 substantial departure from accepted professional judgment, practice, or standards as to
23 demonstrate that the person responsible actually did not base the decision on such a
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1 judgment.” Id. at 323; Houghton v. South, 965 F.2d 1532, 1536 (9th Cir.1992).

2 Plaintiff alleges that he was given medication from the floor, endured a severe
3 physical reaction to it, and was then ignored. Plaintiff’s asserts the conclusion that such
4 acts violated constitutional rights, but he includes no facts that would enable the court to
5 so find. The Complaint has no factual allegations that would support a conclusion that
6 what happened was a substantial departure from accepted professional judgment,
7 practice, or standards. Even Plaintiff acknowledges that medication periodically falls on
8 the floor and is taken without adverse side effects. To state a claim, Plaintiff must provide
9 more detail and explain why Defendant Endile’s conduct amounted to a significant
10 departure from accepted professional judgment, practice, or standards. Plaintiff must
11 allege facts; suspicions and speculation are not sufficient to state a claim.
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14 Plaintiff’s claims against Defendants Perryman and Vally are also deficient. The
15 facts alleged fall short of establishing that either Defendant failed to exercise professional
16 judgment. Plaintiff’s sole allegation regarding Defendant Vally is that she asked, perhaps
17 callously, what Plaintiff wanted her to do about his condition. The Complaint is missing the
18 circumstantial detail that would permit the Court to make a determination that Vally acted
19 outside the bounds of professional judgment, practice, or standards and that Plaintiff
20 suffered harm as a result. Plaintiff does not allege what happened immediately after Vally
21 questioned him, he does not describe his condition at the time they interacted, he does not
22 explain what responsibility Vally had at the time, and he does not explain what, if any,
23 adverse consequences he suffered as a result of her response.
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25 Finally, Plaintiff asserts that Defendant Perryman is responsible for a constitutional
26 violation because she failed to respond to Plaintiff’s administrative grievance promptly.
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1 Perryman was in a meeting during the incident and Plaintiff's only allegation is that she
2 failed to respond to his complaint. Generally, denying an administrative appeal does not
3 cause or contribute to the underlying violation. George v. Smith, 507 F.3d 605, 609 (7th
4 Cir. 2007) (quotation marks omitted). However, if there is an ongoing constitutional
5 violation and the supervisor had the authority and opportunity to prevent the ongoing
6 violation, a plaintiff may be able to establish liability by alleging that the supervisor knew
7 about an impending violation and failed to prevent it. See Taylor v. List, 880 F.2d 1040,
8 1045 (9th Cir. 1989) (supervisory official liable under § 1983 if he or she knew of a violation
9 and failed to act to prevent it). That circumstance has not been presented here. Plaintiff
10 complains of conduct that occurred after the alleged violations were completed. Plaintiff
11 has not set forth facts to demonstrate that Perryman knew of, and failed to prevent, any
12 constitutional violations. Accordingly, he fails to state a claim against the Defendant.
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15 While the Court does not condone acts such as Plaintiff has described here, there
16 is nothing in the pleading to suggest they reached the level of a constitutional violation.
17 The Court will grant Plaintiff leave to amend. To state a claim, Plaintiff must provide a
18 detailed and chronological recitation of the events in question. The facts alleged must
19 demonstrate how each Defendant acted in a manner that substantially departed from
20 professionally accepted judgment, practice, or standards. Youngberg, 457 U.S. at 324.
21 Plaintiff must show that the Defendants' conduct reflected "a conscious indifference
22 amounting to gross negligence, so as to demonstrate that [their] decision[s] [were] not
23 based upon professional judgment." Houghton, 965 F.2d at 1536. He must allege facts
24 showing that he suffered injury as a result of the unconstitutional actions.
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1 **V. CONCLUSION AND ORDER**

2 Plaintiff's Complaint does not state a claim for relief under section 1983. The Court
3 will grant Plaintiff an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d
4 1446, 1448-49 (9th Cir. 1987). If Plaintiff opts to amend, he must demonstrate that the
5 alleged acts resulted in a deprivation of his constitutional rights. Iqbal, 129 S.Ct. at 1948-
6 49. Plaintiff must set forth "sufficient factual matter . . . to 'state a claim that is plausible
7 on its face.'" Id. at 1949 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff must also
8 demonstrate that each named Defendant personally participated in a deprivation of his
9 rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

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11 Plaintiff should note that although he has been given the opportunity to amend, it
12 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th Cir.
13 2007). Plaintiff should carefully read this Screening Order and focus his efforts on curing
14 the deficiencies set forth above.

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16 Finally, Plaintiff is advised that Local Rule 220 requires that an amended complaint
17 be complete in itself without reference to any prior pleading. As a general rule, an
18 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55,
19 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no longer
20 serves any function in the case. Therefore, in an amended complaint, as in an original
21 complaint, each claim and the involvement of each defendant must be sufficiently alleged.
22 The amended complaint should be clearly and boldly titled "First Amended Complaint,"
23 refer to the appropriate case number, and be an original signed under penalty of perjury.
24 Plaintiff's amended complaint should be brief. Fed. R. Civ. P. 8(a). Although accepted as
25 true, the "[f]actual allegations must be [sufficient] to raise a right to relief above the
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1 speculative level” Twombly, 550 U.S. at 555 (citations omitted).

2 Accordingly, it is HEREBY ORDERED that:

3 1. The Clerk’s Office shall send Plaintiff (1) a blank civil rights complaint form
4 and (2) a copy of his Complaint, filed April 22, 2013;

5 2. Plaintiff’s Complaint is dismissed for failure to state a claim upon which relief
6 may be granted;

7 3. Plaintiff shall file an amended complaint within thirty (30) days; and

8 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
9 action will be dismissed, with prejudice, for failure to state a claim and failure to comply
10 with a court order.
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14 IT IS SO ORDERED.

15 Dated: July 1, 2013

16 1st Michael J. Seng
17 UNITED STATES MAGISTRATE JUDGE
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