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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA
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9 BENANCIO RODRIGUEZ,
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11 Plaintiff,

12 vs.

13 E. AGUIRRE, et al.,
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15 Defendants

Case No. 1:13 cv 01457 GSA PC

ORDER DISMISSING COMPLAINT AND
GRANTING PLAINTIFF LEAVE TO FILE
AN AMENDED COMPLAINT

AMENDED COMPLAINT DUE
IN THIRTY DAYS

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17 **I. Screening Requirement**

18 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights
19 action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction
20 pursuant to 28 U.S.C. § 636(c).¹

21 The Court is required to screen complaints brought by prisoners seeking relief against a
22 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
23 The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
24 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
25 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.

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28 ¹ Plaintiff filed a consent to proceed before a magistrate judge on October 17, 2013 (ECF No. 5).

§ 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

“Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited exceptions,” none of which applies to section 1983 actions. Swierkiewicz v. Sorema N. A., 534 U.S. 506, 512 (2002); Fed. R. Civ. P. 8(a). Pursuant to 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). “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” Swierkiewicz, 534 U.S. at 512. However, “the liberal pleading standard . . . applies only to a plaintiff’s factual allegations.” Neitze v. Williams, 490 U.S. 319, 330 n.9 (1989). “[A] liberal interpretation of a civil rights complaint may not supply essential elements of the claim that were not initially pled.” Bruns v. Nat’l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997) (quoting Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982)).

II. Plaintiff’s Claims

Plaintiff, an inmate in the custody of the California Department of Corrections and Rehabilitation (CDCR) at the California Substance Abuse Treatment Facility at Corcoran (SATF), brings this lawsuit against defendant correctional officials employed by the CDCR at SATF. Plaintiff names as Defendants E. Aguirre and R. Bralford. Plaintiff claims that he was injured in an accident and subjected to inadequate medical care in violation of the Eighth Amendment.

Rather than set forth his allegations in the complaint, Plaintiff makes a vague complaint that he is being denied adequate medical care, and refers the Court to documents attached to the complaint. Plaintiff also refers to an incident on E-Facility on February 28, 2012. Plaintiff may not hold defendants liable by claiming deliberate indifference and attaching documents to his

complaint. Plaintiff must set forth, in his complaint, a statement of claim alleging facts that indicate that each defendant was deliberately indifferent to his safety or his medical care.

A. Medical Care

“[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 295 (1976)). The two part test for deliberate indifference requires the plaintiff to show (1) “‘a serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition could result in further significant injury or the unnecessary and wanton infliction of pain,’” and (2) “‘the defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at 1096 (quoting McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds, WMX Techs., Inc. v. Miller, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc) (internal quotations omitted)). Deliberate indifference is shown by “a purposeful act or failure to respond to a prisoner’s pain or possible medical need, and harm caused by the indifference.” Id. (citing McGuckin, 974 F.2d at 1060). Where a prisoner is alleging a delay in receiving medical treatment, the delay must have led to further harm in order for the prisoner to make a claim of deliberate indifference to serious medical needs. McGuckin at 1060 (citing Shapely v. Nevada Bd. of State Prison Comm’rs, 766 F.2d 404, 407 (9th Cir. 1985)).

B. Safety

The Eighth Amendment requires prison officials to take reasonable measures to guarantee the safety of inmates, which has been interpreted to include a duty to protect prisoners. Farmer v. Brennan, 511 U.S. 825, 832-33 (1994); Hearns v. Terhune, 413 F.3d 1036, 1040 (9th Cir. 2005). A prisoner seeking relief for an Eighth Amendment violation must show that the officials acted with deliberate indifference to the threat of serious harm or injury to an inmate. Gibson v. County of Washoe, 290 F.3d 1175, 1187 (9th Cir. 2002). “Deliberate indifference” has both subjective and objective components. A prison official must “be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists and . . . must also draw

1 the inference.” Farmer, 511 U.S. at 837. Liability may follow only if a prison official “knows
2 that inmates face a substantial risk of serious harm and disregards that risk by failing to take
3 reasonable measures to abate it.” Id. at 847.

4 Here, the Court finds Plaintiff’s allegations to be vague. Plaintiff sets forth a generalized
5 allegation regarding his health care, and names 2 individual defendants. To state a claim under
6 section 1983, a plaintiff must allege that (1) the defendant acted under color of state law and (2)
7 the defendant deprived him of rights secured by the Constitution or federal law. Long v. County
8 of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). “A person deprives another of a
9 constitutional right, where that person ‘does an affirmative act, participates in another’s
10 affirmative acts, or omits to perform an act which [that person] is legally required to do that
11 causes the deprivation of which complaint is made.’” Hydrick v. Hunter, 500 F.3d 978, 988 (9th
12 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “[T]he ‘requisite
13 causal connection can be established not only by some kind of direct, personal participation in
14 the deprivation, but also by setting in motion a series of acts by others which the actor knows or
15 reasonably should know would cause others to inflict the constitutional injury.’” Id. (quoting
16 Johnson at 743-44). Plaintiff has not specifically charged each defendant with conduct
17 indicating that they knew of and disregarded a serious risk to Plaintiff’s health, resulting in injury
18 to Plaintiff. Plaintiff may not hold defendants liable simply by alleging a serious medical
19 condition and then charge defendants with the vague allegation that they neglected his condition.
20 Plaintiff must allege facts indicating that each defendant was aware of a specific harm to Plaintiff,
21 and acted with deliberate indifference to that harm. Plaintiff has failed to do so here. The
22 complaint should therefore be dismissed. Plaintiff will, however, be granted leave to file an
23 amended complaint.

24 Plaintiff need not, however, set forth legal arguments in support of his claims. In order to
25 hold an individual defendant liable, Plaintiff must name the individual defendant, describe where
26 that defendant is employed and in what capacity, and explain how that defendant acted under
27 color of state law. Plaintiff should state clearly, in his own words, what happened. Plaintiff
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1 must describe what each defendant, *by name*, did to violate the particular right described by
2 Plaintiff. Plaintiff has failed to do so here.

3 **III. Conclusion and Order**

4 The Court has screened Plaintiff's complaint and finds that it does not state any claims
5 upon which relief may be granted under section 1983. The Court will provide Plaintiff with the
6 opportunity to file an amended complaint curing the deficiencies identified by the Court in this
7 order. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff is cautioned that he
8 may not change the nature of this suit by adding new, unrelated claims in his amended
9 complaint. George, 507 F.3d at 607 (no "buckshot" complaints).

10 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
11 each named defendant did that led to the deprivation of Plaintiff's constitutional or other federal
12 rights, Hydrick, 500 F.3d at 987-88. Although accepted as true, the "[f]actual allegations must
13 be [sufficient] to raise a right to relief above the speculative level" Bell Atlantic Corp. v.
14 Twombly, 550 U.S. 544, 554 (2007) (citations omitted).

15 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
16 Forsyth v. Humana, Inc., 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565,
17 567 (9th Cir. 1987), and must be "complete in itself without reference to the prior or superceded
18 pleading," Local Rule 15-220. Plaintiff is warned that "[a]ll causes of action alleged in an
19 original complaint which are not alleged in an amended complaint are waived." King, 814 F.2d
20 at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir. 1981)); accord
21 Forsyth, 114 F.3d at 1474.

22 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 23 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a
24 claim;
- 25 2. The Clerk's Office shall send to Plaintiff a complaint form;
- 26 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file
27 an amended complaint;

- 1 4. Plaintiff may not add any new, unrelated claims to this action via his amended
2 complaint and any attempt to do so will result in an order striking the amended
3 complaint; and
4 5. If Plaintiff fails to file an amended complaint, the Court will dismiss this action,
5 with prejudice, for failure to state a claim.
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9 IT IS SO ORDERED.

10 Dated: **December 11, 2014**

11 **/s/ Gary S. Austin**

12 UNITED STATES MAGISTRATE JUDGE
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