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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CURTIS RENEE JACKSON,

Plaintiff,

v.

STILES,

Defendant.

Case No. 1:14-cv-00752-MJS (PC)

**ORDER (1) DIRECTING PLAINTIFF TO
FILE AN APPLICATION TO PROCEED
IN FORMA PAUPERIS OR PAY THE
\$400 FILING FEE IN FULL, and (2)
DISMISSING COMPLAINT WITH LEAVE
TO AMEND**

(ECF No. 1)

THIRTY-DAY DEADLINE

Plaintiff is proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. He has neither filed an application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915 nor paid the \$400 filing fee.

The Complaint is before the Court for screening.

I. SCREENING REQUIREMENT

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, malicious,” or that fail to state a claim upon

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

7 **II. PLEADING STANDARD**

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

14 To state a claim under § 1983, a plaintiff must allege two essential elements: (1)
15 that a right secured by the Constitution or laws of the United States was violated and (2)
16 that the alleged violation was committed by a person acting under the color of state law.
17 See *West v. Atkins*, 487 U.S. 42, 48 (1988); *Ketchum v. Alameda Cnty.*, 811 F.2d 1243,
18 1245 (9th Cir. 1987).

19 A complaint must contain “a short and plain statement of the claim showing that
20 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
21 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
22 supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S.
23 662, 678 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
24 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim that is
25 plausible on its face.” *Id.* Facial plausibility demands more than the mere possibility that
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1 a defendant committed misconduct and, while factual allegations are accepted as true,
2 legal conclusions are not. *Id.* at 667-68.

3 **III. PLAINTIFF'S ALLEGATIONS**

4 Plaintiff asserts that he was exiting the Pleasant Valley State Prison ("PVSP")
5 medical clinic in his wheelchair at the same time that Defendant Stiles, a Licensed
6 Vocational Nurse at PVSP, was exiting the nurse's station. Stiles pushed open the
7 nurse's station door without looking to see if it was safe to do so. The door was flung
8 open into Plaintiff's path of travel. Plaintiff collided with the door and his left hand was
9 pinned against the wheelchair causing injuries for which he received treatment.
10

11 Plaintiff seeks monetary damages and a declaration that his rights have been
12 violated.
13

14 **IV. DISCUSSION**

15 **A. Must Proceed In Forma Pauperis or Pay Filing Fee**

16 Plaintiff may not proceed in this action unless, within thirty days following service
17 of this Order, he either submits an application to proceed in forma pauperis, or he pays
18 the \$400 filing fee in full. 28 U.S.C. § 1915.

19 If Plaintiff submits an application to proceed in forma pauperis, he shall also
20 within sixty (60) days thereof, submit a certified copy of his prison trust statement for the
21 six month period immediately preceding filing of the Complaint
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23 **B. Eighth Amendment Deliberate Indifference**

24 Plaintiff's allegations are the type which often are characterized as Eighth
25 Amendment deliberate indifference claims, however the Complaint does not allege facts
26 suggesting Defendant was deliberately indifferent to a substantial risk of serious harm to
27 Plaintiff. *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The deliberate indifference
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1 standard involves an objective and a subjective prong. First, the alleged rights violation
2 must be, in objective terms, “sufficiently serious” *Farmer* at 834, citing *Wilson v.*
3 *Seiter*, 501 U.S. 294, 298 (1991). Second, the prison official must “know [] of and
4 disregard [] an excessive risk to inmate health or safety.” *Id.* at 837. Nothing before the
5 Court reflects that Stiles opened the door with any knowledge Plaintiff might be struck
6 by it, much less that Stiles did so intentionally to harm Plaintiff or in knowing disregard
7 of a serious risk to Plaintiff. Indeed, from the facts plead, it appears Stiles was at most
8 careless in his/her actions.

10 Negligence alone is not sufficient to support an Eighth Amendment deliberate
11 indifference claim. *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980), citing
12 *Estelle v. Gamble*, 429 U.S. 97, 105-06 (1976).

14 If Plaintiff chooses to amend, he must allege facts showing Defendant’s knowing
15 disregard of a serious risk of harm.

16 **C. State Law Negligence**

17 A public employee is liable for injury to a prisoner “proximately caused by his
18 negligent or wrongful act or omission.” Cal. Gov’t Code § 844.6(d). “In order to establish
19 negligence under California law, a plaintiff must establish four required elements: (1)
20 duty; (2) breach; (3) causation; and (4) damages.” *Ileto v. Glock Inc.*, 349 F.3d 1191,
21 1203 (9th Cir. 2003). The allegation Defendant negligently opened the door Plaintiff
22 collided with, causing Plaintiff harm, is sufficient on screening to show these elements.

24 However, under the California Tort Claims Act (“CTCA”), a plaintiff may not
25 maintain an action for damages against a public employee unless he alleges facts
26 demonstrating presentation of a written claim to the state Victim Compensation and
27 Government Claims Board within six months of accrual of the action. Cal. Gov’t Code §§
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1 905, 911.2(a), 945.4 & 950.2; *Shirk v. Vista Unified Sch. Dist.*, 42 Cal.4th 201, 209 (Cal.
2 2007); *Mangold v. California Pub. Utils. Comm'n*, 67 F.3d 1470, 1477 (9th Cir. 1995). A
3 plaintiff may file a written application for leave to file a late claim up to one year after the
4 cause of action accrues. Cal. Gov't Code § 911.4. Plaintiff does not allege compliance
5 with CTCA claim filing requirements.
6

7 Plaintiff should note that, even if he were able to show actionable state law
8 negligence, this Court will not exercise supplemental jurisdiction over a state law claim
9 in the absence of a cognizable federal claim. 28 U.S.C. § 1367(a); *Herman Family*
10 *Revocable Trust v. Teddy Bear*, 254 F.3d 802, 805 (9th Cir. 2001). “When . . . the court
11 dismisses the federal claim leaving only state claims for resolution, the court should
12 decline jurisdiction over the state claims and dismiss them without prejudice.” *Les*
13 *Shockley Racing v. National Hot Rod Ass'n*, 884 F.2d 504, 509 (9th Cir. 1989). In such
14 a case Plaintiff would be able to seek relief in state court.
15

16 If Plaintiff chooses to amend, he must allege facts showing all the above
17 elements and satisfaction of CTCA claim filing requirements.

18 **D. Declaratory Relief**

19 Plaintiff does not need and is not entitled to declaratory relief. “[D]eclaratory
20 judgment, like other forms of equitable relief, should be granted only as a matter of
21 judicial discretion, exercised in the public interest.” *Eccles v. Peoples Bank of Lakewood*
22 *Village*, 333 U.S. 426, 431 (1948). “Declaratory relief should be denied when it will
23 neither serve a useful purpose in clarifying and settling the legal relations in issue nor
24 terminate the proceedings and afford relief from the uncertainty and controversy faced
25 by the parties.” *United States v. Washington*, 759 F.2d 1353, 1357 (9th Cir. 1985).
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27 Here, any judgment that may be entered in Plaintiff's favor will constitute a
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1 declaration his rights were violated. Leave to amend this claim is denied.

2 **V. CONCLUSIONS AND ORDER**

3 Plaintiff may not proceed in this action unless he submits an in forma pauperis
4 application or pays the \$400 filing fee in full. The Complaint fails to state any cognizable
5 claim. The Court will provide Plaintiff with an opportunity to file an amended complaint
6 curing the deficiencies identified by the Court in this order. *Noll v. Carlson*, 809 F.2d
7 1446, 1448-49 (9th Cir. 1987).

8 If Plaintiff opts to amend, his amended complaint should be brief, Fed. R. Civ. P.
9 8(a), but must state what each named Defendant did that led to the deprivation of
10 Plaintiff's constitutional or other federal rights, *Iqbal*, 556 U.S. at 677-78, consistent with
11 this Order. Although accepted as true, the "[f]actual allegations must be [sufficient] to
12 raise a right to relief above the speculative level" *Twombly*, 550 U.S. at 555.
13 Further, Plaintiff may not change the nature of this suit by adding new, unrelated claims
14 in his amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (no
15 "buckshot" complaints).

16 Finally, an amended complaint supersedes the original complaint, *Forsyth v.*
17 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567
18 (9th Cir. 1987), and must be "complete in itself without reference to the prior or
19 superseded pleading." Local Rule 220.

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

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- 22 1. The Clerk's Office shall send Plaintiff an application to proceed in forma
23 pauperis and an amended civil rights complaint form,
 - 24 2. Plaintiff shall, within thirty days following service of this Order, either file
25 the attached application to proceed in forma pauperis, completed and
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1 signed, or pay the \$400 filing fee in full,

- 2 3. If Plaintiff files an application to proceed in forma pauperis, he shall within
3 sixty days thereof also submit a certified copy of his prison trust statement
4 for the six month period immediately preceding filing of the Complaint,
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6 4. Within thirty days following service of this Order, Plaintiff must also file an
7 amended complaint curing the deficiencies identified by the Court in this
8 Order, and
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10 5. If Plaintiff fails to comply with this Order, the undersigned will recommend
11 this action be dismissed.

12 IT IS SO ORDERED.

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14 Dated: June 2, 2014

15 /s/ Michael J. Seng
16 UNITED STATES MAGISTRATE JUDGE
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