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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALTON DEAN,

 Plaintiff,

 v.

ROBERT SHARFFENBERG, M.D., et al.,

 Defendants.

Case No. 1:14-cv-00768 DLB PC

ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND

THIRTY-DAY DEADLINE

Plaintiff Alton Dean (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on May 12, 2014.¹ He names Robert Sharffenberg, M.D., Nurse Lynn, and Nurse Connie as Defendants.

A. 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 or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall

¹ Plaintiff consented to the jurisdiction of the United States Magistrate on May 29, 2014.

1 dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a
2 claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

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

10 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other
11 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092
12 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.
13 Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff’s allegations must link the actions or
14 omissions of each named defendant to a violation of his rights; there is no respondeat superior
15 liability under section 1983. Iqbal, 556 U.S. at 676-77; Simmons v. Navajo County, Ariz., 609 F.3d
16 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009);
17 Jones, 297 F.3d at 934. Plaintiff must present factual allegations sufficient to state a plausible claim
18 for relief. Iqbal, 556 U.S. at 678-79; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009).
19 The mere possibility of misconduct falls short of meeting this plausibility standard. Iqbal, 556 U.S.
20 at 678; Moss, 572 F.3d at 969.

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

22 Plaintiff is currently incarcerated at Corcoran Substance Abuse and Treatment Facility
23 (“CSATF”) where the events giving rise to this action took place.

24 Plaintiff alleges the following. Prior to March 2, 2012, Plaintiff had been receiving adequate
25 treatment for approximately 17 years. From March 2, 2012, to the present, Defendant has denied
26 him adequate care. Plaintiff states he has been attacked four times by inmates from March 29, 2012,
27 to the present. Plaintiff states he is a wheelchair-bound hemiplegic who has been taking narcotic
28 pain medication for 17 years. Plaintiff states his wheelchair gloves, wedge pillow, antiseptic

1 antibiotic skin cleanser, creams, and gels have all been denied by the Defendant.

2 Plaintiff seeks damages in the amount of \$500,000.00 as well as a full pardon.

3 **C. DISCUSSION**

4 1. Linkage

5 Under section 1983, Plaintiff must link the named defendants to the participation in the
6 violation at issue. Ashcroft v. Iqbal, 556 U.S. 662, 676-77, 129 S.Ct. 1937, 1948-49 (2009);
7 Simmons v. Navajo County, Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of
8 Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
9 2002). Liability may not be imposed under a theory of *respondeat superior*, and there must exist
10 some causal connection between the conduct of each named defendant and the violation at issue.
11 Iqbal, 556 U.S. at 676-77; Lemire v. California Dep't of Corr. and Rehab., 726 F.3d 1062, 1074-75
12 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc); Starr v.
13 Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101 (2012).

14 Here, Plaintiff fails to state how Defendants Sharffenberg, Lynn and Connie participated in
15 the violations at issue. Plaintiff must specifically state how each named Defendant personally acted
16 to deprive him of his rights. Plaintiff will be provided an opportunity to file an amended complaint.

17 2. Medical Treatment

18 The Eighth Amendment's prohibition against cruel and unusual punishment protects
19 prisoners not only from inhumane methods of punishment but also from inhumane conditions of
20 confinement. Morgan v. Morgensen, 465 F.3d 1041, 1045 (9th Cir. 2006) (citing Farmer v.
21 Brennan, 511 U.S. 825, 847, 114 S.Ct. 1970 (1994) and Rhodes v. Chapman, 452 U.S. 337, 347, 101
22 S.Ct. 2392 (1981)) (quotation marks omitted). While conditions of confinement may be, and often
23 are, restrictive and harsh, they must not involve the wanton and unnecessary infliction of pain.
24 Morgan, 465 F.3d at 1045 (citing Rhodes, 452 U.S. at 347) (quotation marks omitted).

25 Prison officials have a duty to ensure that prisoners are provided adequate shelter, food,
26 clothing, sanitation, medical care, and personal safety, Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir.
27 2000) (quotation marks and citations omitted), but not every injury that a prisoner sustains while in
28 prison represents a constitutional violation, Morgan, 465 F.3d at 1045 (quotation marks omitted). To

1 maintain an Eighth Amendment claim, inmates must show deliberate indifference to a substantial
2 risk of harm to their health or safety. *E.g.*, Farmer, 511 U.S. at 847; Thomas v. Ponder, 611 F.3d
3 1144, 1151-52 (9th Cir. 2010); Foster v. Runnels, 554 F.3d 807, 812-14 (9th Cir. 2009); Morgan,
4 465 F.3d at 1045; Johnson, 217 F.3d at 731; Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998).

5 While the Eighth Amendment of the United States Constitution entitles Plaintiff to medical
6 care, the Eighth Amendment is violated only when a prison official acts with deliberate indifference
7 to an inmate’s serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012),
8 *overruled in part on other grounds*, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014);
9 Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th
10 Cir. 2006). Plaintiff “must show (1) a serious medical need by demonstrating that failure to treat
11 [his] condition could result in further significant injury or the unnecessary and wanton infliction of
12 pain,” and (2) that “the defendant’s response to the need was deliberately indifferent.” Wilhelm, 680
13 F.3d at 1122 (citing Jett, 439 F.3d 1091, 1096 (9th Cir. 2006)). Deliberate indifference is shown by
14 “(a) a purposeful act or failure to respond to a prisoner’s pain or possible medical need, and (b) harm
15 caused by the indifference.” Wilhelm, 680 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The
16 requisite state of mind is one of subjective recklessness, which entails more than ordinary lack of
17 due care. Snow, 681 F.3d at 985 (citation and quotation marks omitted); Wilhelm, 680 F.3d at 1122.

18 Here, Plaintiff’s allegation that he was denied adequate medical care is too vague to state a
19 claim. Further, Plaintiff’s allegation that Defendant deprived him certain health aids, cleansers and
20 creams does not present an Eighth Amendment violation. Plaintiff fails to show a serious medical
21 need that requires treatment lest significant injury or unnecessary and wanton infliction of pain
22 would result. In addition, Plaintiff’s allegations do not demonstrate that any named Defendant acted
23 with the requisite state of mind.

24 Plaintiff has therefore failed to state a deliberate indifference claim against any named
25 Defendant. Plaintiff will be granted an opportunity to file an amended complaint.

26 **D. CONCLUSION AND ORDER**

27 Plaintiff’s complaint fails to state a claim upon which relief may be granted under section
28 1983. The Court will provide Plaintiff with an opportunity to file an amended complaint. Akhtar v.

1 Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000).

2 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but it must state what
3 each named Defendant did that led to the deprivation of Plaintiff's federal rights and liability may
4 not be imposed on supervisory personnel under the theory of mere *respondeat superior*, Iqbal, 556
5 U.S. at 676-77; Starr v. Baca, 652 F.3d 1202, 1205-07 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 2101
6 (2012). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a right to
7 relief above the speculative level. . . ." Twombly, 550 U.S. at 555 (citations omitted).

8 Finally, an amended complaint supercedes the original complaint, Lacey v. Maricopa
9 County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (en banc), and it must be "complete in itself without
10 reference to the prior or superceded pleading," Local Rule 220.

11 Accordingly, it is HEREBY ORDERED that:

- 12 1. Plaintiff's complaint is dismissed, with leave to amend, for failure to state a claim
13 under section 1983;
- 14 2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
- 15 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
16 amended complaint; and
- 17 4. If Plaintiff fails to file an amended complaint in compliance with this order, this
18 action will be dismissed, with prejudice, for failure to state a claim.

19
20 IT IS SO ORDERED.

21 Dated: January 27, 2015

22 /s/ Dennis L. Beck
23 UNITED STATES MAGISTRATE JUDGE