

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ALONZO TREVON TALLEY,

 Plaintiff,

 v.

CANTU, et al.,

 Defendants.

Case No. 1:14-cv-00781-LJO-DLB PC

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF SECOND
AMENDED COMPLAINT FOR FAILURE TO
STATE A CLAIM FOR RELIEF

THIRTY-DAY OBJECTION DEADLINE

Plaintiff Alonzo Trevon Talley (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action on May 22, 2014. Pursuant to Court order, he filed a First Amended Complaint on November 21, 2014, and a Second Amended Complaint on April 15, 2015. He names LVN Cantu, LVN Nallet and RN K. Powell as Defendants.

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 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.

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

4 § 1915(e)(2)(B)(ii).

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

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

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

18 Plaintiff is currently incarcerated at the California Substance Abuse Treatment Facility in
19 Corcoran, California, where the events at issue occurred.

20 Plaintiff alleges that on December 25, 2013, Defendant Cantu “wrongfully” called him to
21 have his stitches removed. ECF No. 14, at 3. Based on a December 16, 2013, doctor’s note
22 indicating that the stitches may be ready to be removed on December 27, 2013, Plaintiff contends
23 that Defendant Cantu called him two days too early and therefore wasn’t authorized to take the
24 stitches out. Plaintiff suggests that Defendant Cantu knew “she was messing up.” ECF No. 14, at 3.
25 He contends that Defendant Cantu and Defendant Nallet had difficulty removing the stitches because
26 they were not ready, and as professional nurses, they should have known this. Instead, they “acted
27 under all the original claims I previously presented. . .” ECF No. 14, at 4. He contends that that
28

1 Defendants Cantu and Nallet “wrongful[ly]” participated in the removal and caused the wound to
2 open back up a little. ECF No. 14, at 4.

3 Plaintiff alleges that Defendant Nallet used “excessive force” during the removal, and that
4 Defendant Powell incorrectly told Plaintiff on December 27, 2013, that the pain, redness and
5 numbness were normal. ECF No. 14, at 4. Plaintiff also showed Defendant Powell the hole in his
6 hand caused by Defendant Nallet, but Defendant Powell said it was “alright.” ECF No. 14, at 4.
7 Plaintiff contends that all three Defendants acted without reasonable care.

8 Based on these facts, Plaintiff states that he is challenging the “medical negligence” of
9 Defendants, which amounted to cruel and unusual punishment.

10 **C. ANALYSIS**

11 Plaintiff’s Second Amended Complaint is an exact copy of his First Amended Complaint,
12 though it includes exhibits that were omitted from the First Amended Complaint. Accordingly, the
13 analysis in the Court’s March 31, 2015, screening order remains applicable.

14 1. Amended Complaint Supersedes Original Complaint

15 In the Court’s order dismissing his original complaint, the Court explained that an amended
16 complaint supersedes the original complaint, Lacey v. Maricopa County, 693 F.3d 896, 907 n.1 (9th
17 Cir. 2012) (en banc), and must be “complete in itself without reference to the prior or superseded
18 pleading,” Local Rule 220.

19 In both his First Amended Complaint and Second Amended Complaint, Plaintiff provides
20 significantly less detail in his factual allegations. Instead, he appears to be (1) addressing only the
21 deficiency identified by the Court, i.e., a failure to demonstrate that any Defendant acted with
22 deliberate indifference; or (2) arguing why the prior screening order was incorrect. Plaintiff cites to
23 the “original claims” presented in his complaint, without actually including these claims in his
24 amended complaint.

25 The result, therefore, is an incomplete version of the alleged events. The Court cannot, as
26 Plaintiff seems to suggest, refer back to his complaint to discern his “original claims.” Plaintiff
27 therefore fails to state a claim because his Second Amended Complaint is incomplete.
28

1 Plaintiff was informed of this deficiency in the prior screening order, but he has failed to
2 correct it.

3 2. Eighth Amendment

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

16 In the prior screening orders, the Court explained that Plaintiff's facts did not demonstrate
17 that any Defendant acted with deliberate indifference. The Court also explained that even if
18 Defendants erred, a finding which was not supported by the record, an Eighth Amendment claim
19 may not be premised on even gross negligence. Wood v. Housewright, 900 F.2d 1332, 1334 (9th
20 Cir. 1990).

21 As in his First Amended Complaint, Plaintiff alleges that Defendant Cantu "wrongfully"
22 called him in to have his stitches removed two days early, and that she wasn't authorized to take the
23 stitches out. He also alleges that Defendants Cantu and Nallet knew, or should have known, that the
24 stitches were not ready to be removed. As to Defendant Powell, he simply alleges that she gave him
25 incorrect advice.

26 Plaintiff's claims again fail to demonstrate that any Defendant acted with the requisite state
27 of mind. "Deliberate indifference is a high legal standard." Toguchi v. Chung, 391 F.3d 1051, 1060
28

1 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be aware of the facts from
2 which the inference could be drawn that a substantial risk of serious harm exists,’ but that person
3 ‘must also draw the inference.’” *Id.* at 1057 (quoting *Farmer*, 511 U.S. at 837). ““If a prison official
4 should have been aware of the risk, but was not, then the official has not violated the Eighth
5 Amendment, no matter how severe the risk.”” *Id.* (quoting *Gibson v. County of Washoe, Nevada*,
6 290 F.3d 1175, 1188 (9th Cir. 2002)).

7 In other words, even if Defendants “wrongfully” took the stitches out, or gave incorrect
8 advice, these facts, alone, do not demonstrate that any Defendant acted with deliberate indifference.
9 The requisite state of mind is one of subjective recklessness, which entails more than ordinary lack
10 of due care. *Snow v. McDaniel*, 681 F.3d 978, 985 (9th Cir. 2012), overruled in part on other
11 grounds, *Peralta v. Dillard*, 744 F.3d 1076, 1082-83 (9th Cir. 2014) (citation and quotation marks
12 omitted); *Wilhelm*, 680 F.3d at 1122.

13 For these reasons, Plaintiff fails to state an Eighth Amendment claim against any Defendant.
14 He was informed of this deficiency in the prior screening orders, but failed to correct the claim.

15 2. Medical Negligence

16 Pursuant to 28 U.S.C. § 1367(a), in any civil action in which the district court has original
17 jurisdiction, the district court “shall have supplemental jurisdiction over all other claims in the action
18 within such original jurisdiction that they form part of the same case or controversy under Article
19 III,” except as provided in subsections (b) and (c). “[O]nce judicial power exists under § 1367(a),
20 retention of supplemental jurisdiction over state law claims under 1367(c) is discretionary.” *Acri v.*
21 *Varian Assoc., Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997).

22 The Court will not exercise supplemental jurisdiction over any state laws claim because
23 Plaintiff has not stated a cognizable federal claim. 28 U.S.C. § 1367(3); *Parra v. PacifiCare of Az.,*
24 *Inc.*, 715 F.3d 1146, 1156 (9th Cir. 2013); *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d
25 802, 805 (9th Cir. 2001).

1 **D. FINDINGS AND RECOMMENDATIONS**

2 Plaintiff's Second Amended Complaint fails to state a claim upon which relief may be
3 granted under section 1983. Plaintiff has been informed of the deficiencies on two occasions, and
4 each amendment has failed to set forth facts to cure the issues. In the March 31, 2015, order, the
5 Court indicated that Plaintiff's Second Amended Complaint would be his final opportunity to file an
6 amended complaint. Accordingly, the Court finds that further leave to amendment is not warranted,
7 especially since the pleading portion of Plaintiff's Second Amended Complaint is an exact copy of
8 his First Amended Complaint. Akhtar v. Mesa, 698 F.3d 1202, 1212-13 (9th Cir. 2012); Lopez v.
9 Smith, 203 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir.
10 1987).

11 The Court therefore recommends that this action be DISMISSED WITH PREJUDICE for
12 failure to state a claim for which relief may be granted.

13 These Findings and Recommendations are submitted to the United States District Judge
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
15 days after date of service of these Findings and Recommendations, Plaintiff may file written
16 objections with the Court. Such a document should be captioned "Objections to Magistrate Judge's
17 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
18 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
19 1153 (9th Cir. 1991).

20
21 IT IS SO ORDERED.

22 Dated: October 5, 2015

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