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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

FERNANDO MORENO,)	Case No.: 1:14-cv-01356-SAB (PC)
)	
Plaintiff,)	
)	
v.)	ORDER DISMISSING COMPLAINT, WITH
)	LEAVE TO AMEND, FOR FAILURE TO
)	STATE A COGNIZABLE CLAIM FOR
CASTEL,)	RELIEF
)	
Defendant.)	[ECF No. 1]
)	
)	

Plaintiff Fernando Moreno is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983, filed August 29, 2014.

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 or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

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)(2). Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,

1 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,
2 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally
3 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
4 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

5 Prisoners proceeding pro se in civil rights actions are still entitled to have their pleadings
6 liberally construed and to have any doubt resolved in their favor, but the pleading standard is now
7 higher, Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted), and to survive
8 screening, Plaintiff’s claims must be facially plausible, which requires sufficient factual detail to allow
9 the Court to reasonably infer that each named defendant is liable for the misconduct alleged. Iqbal,
10 556 U.S. at 678-79; Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir. 2009). The “sheer
11 possibility that a defendant has acted unlawfully” is not sufficient, and “facts that are ‘merely
12 consistent with’ a defendant’s liability” falls short of satisfying the plausibility standard. Iqbal, 556
13 U.S. at 678; Moss, 572 F.3d at 969.

14 II.

15 COMPLAINT ALLEGATIONS

16 On June 1, 2014, Plaintiff was seriously injured due to the gross negligence of Sergeant Castel.
17 Sergeant Castel failed to follow standard procedure when he escorted Plaintiff, while handcuffed
18 (behind his back) down the stairway. Sergeant Castel failed to use the guardrail to properly secure the
19 safety of Plaintiff and himself. Sergeant Castel recklessly took two steps, at one time, down the
20 stairway and did not use the guardrail causing Plaintiff to fall injuring his shoulder and back.

21 Plaintiff requests \$295,000.54, along with written apology.

22 III.

23 DISCUSSION

24 A. Failure to Protect/Negligence

25 To state a claim for failure to protect, Plaintiff must allege facts sufficient to show that
26 Defendants were “deliberately indifferent,” that they were aware of, but nevertheless consciously
27 disregarded an excessive risk to his health or safety. Farmer v. Brennan, 511 U.S. 825, 834 (1994). If
28 the official is not alleged to have actual knowledge of a serious risk of harm, but is alleged to be aware

1 of facts from which the inference could be drawn that a substantial risk of serious harm exists, the
2 plaintiff must further allege that the official “also dr[ew] the inference. Id. at 837; Wilson v. Setter,
3 501 U.S. 294, 303 (1991). Negligence and/or gross negligence are insufficient to establish deliberate
4 indifference. See Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990). The Constitution does
5 not guarantee due care on the part of state officials; liability for negligently inflicted harm is
6 categorically beneath the threshold of constitutional due process. See County of Sacramento v. Lewis,
7 523 U.S. 833, 849 (1998).

8 To the extent Plaintiff contends that Defendant Castel failed to protect him from harm when he
9 fell down stairs while being escorted while handcuffed, Plaintiff’s constitutional claim fails. Plaintiff
10 alleges that Defendant Castel engaged “gross negligence” when he took two steps, at one time, down
11 the stairway. Plaintiff’s allegations fall short of finding allegations to show that Defendant could have
12 drawn the inference that there was a substantial risk of serious harm to Plaintiff. See Iqbal, 556 U.S.
13 at 678. Accordingly, as currently pled, Plaintiff has failed to demonstrate that Defendant Castel acted
14 with conscious disregard to a risk to his safety. See Farmer, 511 U.S. at 837; Johnson v. Duffy, 588
15 F.2d 740, 743 (9th Cir. 1978) (to establish a deprivation of a constitutional right by any particular
16 individual, the plaintiff must allege that the individual, in acting or failing to act, was the actual and
17 proximate cause of his injury). Thus, Plaintiff’s constitutional claim based on “gross negligence” must
18 be dismissed, with leave to amend, for failure to state a cognizable claim. The Court will grant
19 Plaintiff the opportunity to amend the complaint, if he can do so.

20 IV.

21 CONCLUSION AND ORDER

22 For the reasons stated, Plaintiff’s complaint fails to state a claim upon which relief may be
23 granted. Plaintiff is granted the opportunity to file a first amended complaint within thirty (30) days.
24 Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff may not change the nature of this
25 suit by adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607
26 (7th Cir. 2007) (no “buckshot” complaints).

27 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each
28 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.

1 Iqbal, 556 U.S. 662, 678. “The inquiry into causation must be individualized and focus on the duties
2 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a
3 constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as
4 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .
5 . . .” Twombly, 550 U.S. at 555 (citations omitted).

6 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,
7 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be
8 “complete in itself without reference to the prior or superseded pleading,” Local Rule 220. “All
9 causes of action alleged in an original complaint which are not alleged in an amended complaint are
10 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.
11 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 13 1. The Clerk’s Office shall send Plaintiff an amended civil rights complaint form;
- 14 2. Plaintiff’s complaint, filed August 29, 2014, is dismissed for failure to state a claim;
- 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 action
18 will be dismissed, with prejudice, for failure to state a claim.

19
20 IT IS SO ORDERED.

21 Dated: **December 3, 2014**

22 
UNITED STATES MAGISTRATE JUDGE