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

CLARENCE E. REESE,)	Case No.: 1:15-cv-01337-BAM (PC)
)	
Plaintiff,)	SCREENING ORDER REQUIRING PLAINTIFF
)	TO EITHER FILE A THIRD AMENDED
v.)	COMPLAINT OR NOTIFY COURT OF
)	WILLINGNESS TO PROCEED ONLY ON
P. LLAMAS, Acting Captain, et al.,)	COGNIZABLE CLAIMS
)	
Defendants.)	(ECF No. 13)
)	
)	THIRTY-DAY DEADLINE
)	

I. Screening Requirement and Standard

Plaintiff Clarence E. Reese (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on September 1, 2015 and without the Court screening the original complaint, filed a first amended complaint on March 25, 2016. The Court screened the first amended complaint and granted leave to amend. Plaintiff’s second amended complaint, filed on January 6, 2017, is currently before the Court for screening.

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity and/or against an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). Plaintiff’s complaint, or any portion thereof, is subject to dismissal if it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief

1 from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2); 28 U.S.C. §
2 1915(e)(2)(B)(ii).

3 A complaint must contain “a short and plain statement of the claim showing that the pleader is
4 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, 556 U.S. 662, 678, 129 S.Ct. 1937, 1949 (2009) (citing Bell
7 Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). While a plaintiff’s
8 allegations are taken as true, courts “are not required to indulge unwarranted inferences.” Doe I v.
9 Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks and citation
10 omitted).

11 To survive screening, Plaintiff’s claims must be facially plausible, which requires sufficient
12 factual detail to allow the Court to reasonably infer that each named defendant is liable for the
13 misconduct alleged. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss v.
14 United States Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The sheer possibility that a defendant
15 acted unlawfully is not sufficient, and mere consistency with liability falls short of satisfying the
16 plausibility standard. Iqbal, 556 U.S. at 678, 129 S.Ct. at 1949 (quotation marks omitted); Moss, 572
17 F.3d at 969.

18 **II. Plaintiff’s Allegations**

19 Plaintiff is currently housed at Pelican Bay State Prison. The events in the complaint are
20 alleged to have occurred at Corcoran State Prison. Plaintiff names Acting Captain P. Llamas, Sgt.
21 Sarah Leon and Ric Pavich, Maintenance Engineer, as defendants. Plaintiff alleges as follows:
22 Plaintiff alleges that while he was housed in solitary confinement between May 18, 2015 and July 25,
23 2015, Plaintiff suffered a deprivation of hot/warm water in his cell and shower area. (ECF No. 13, p.
24 7.) Plaintiff did not have water at the required temperature to sanitize his clothes, eating utensils,
25 cell/living area and body. Plaintiff alleges he informed Defendant Llamas of his living condition
26 through a CDCR 22 form, by his CDCR 602 and on June 6, 2015, he spoke personally to Defendant
27 Llamas and informed her of his health issues due to lack of hot/war running water. He said he needed
28 to be moved to a cell with hot/war running water by Defendant Llamas told him to “stop crying and be

1 glad its summer.” Plaintiff alleges that he told Defendant Leon of Plaintiff’s living conditions
2 numerous times between May 18, 2015 and July 25, 2015 as Defendant escorted Plaintiff to yard.
3 (ECF NO. 14, ¶5.) Defendant Leon refused to reassign Plaintiff. Plaintiff was forced to live with
4 unsanitized utensils and bowls, shower in unsanitary area, and “live in human waste.” Defendants did
5 not “redline” his cell and they had the “authority to correct Plaintiff’s living conditions” and knew of
6 the conditions yet refused to take reasonable corrective steps. Plaintiff alleges that Defendants acted
7 with deliberate indifference and also negligently under state law. Plaintiff alleges he complied with
8 California Government Claims Act. In declarations attached as Exhibits to the complaint, other
9 inmates state that they saw Plaintiff with rashes and other conditions which were not present before
10 the water was limited.

11 Plaintiff seeks compensatory and declaratory judgment that his rights were violated.

12 **III. Discussion**

13 **A. Eighth Amendment**

14 To constitute cruel and unusual punishment in violation of the Eight Amendment, prison
15 conditions must involve “the wanton and unnecessary infliction of pain.” Rhodes v. Chapman, 452
16 U.S. 337, 347 (1981). A prisoner’s claim does not rise to the level of an Eighth Amendment violation
17 unless (1) “the prison official deprived the prisoner of the ‘minimal civilized measure of life’s
18 necessities,’” and (2) “the prison official ‘acted with deliberate indifference in doing so.’” Toguchi v.
19 Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir.
20 2002) (citation omitted)). A prison official does not act in a deliberately indifferent manner unless the
21 official “knows of and disregards and excessive risk to inmate health or safety.” Farmer v. Brennan,
22 511 U.S. 825, 834 (1994); See, e.g., Hearns v. Terhune, 413 F.3d 1036, 1042-43 (9th Cir. 2005)
23 (holding that plaintiff’s allegation that he was confined in administrative segregation for nine months,
24 during which time he was deprived of clean running water, was sufficient to make out a conditions of
25 confinement claim); see Preayer v. Ryan, 2016 WL 5341177 (D.Ariz 2016) (lack of running water for
26 two months sufficient to satisfy the objective component of the deliberate indifferent analysis).

27 Here, Plaintiff alleges that he was held in a solitary cell without running hot/warm water for
28 approximately two months, and could not properly sanitize clothes, eating utensils, cell/living area and

1 body. This is sufficient to allege that Plaintiff was deprived of minimal civilized measure of life's
2 necessities.

3 1. Acting Captain P. Llamas

4 Plaintiff must allege that “the prison official ‘acted with deliberate indifference in doing so.’”
5 Toguchi, 391 F.3d at 1057. A plaintiff may show “that a prison official had the requisite knowledge
6 of a substantial risk in the usual ways, including inference from circumstantial evidence. Farmer, 511
7 U.S. at 842. Liability may be imposed “if the evidence showed that [a prison official] merely refused
8 to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of
9 risk that he strongly suspected to exist.” Farmer, 511 U.S. at 843 n.8. Plaintiff has alleged sufficient
10 facts that Defendant Llamas knew of and disregarded the deprivation of hot/warm water. Plaintiff
11 alleges he told Defendant Llamas of his cell’s living conditions and that Defendant Llamas had the
12 authority to correct the circumstances.

13 2. Sgt. Leon

14 The causation inquiry between the deliberate indifference and the Eighth Amendment
15 deprivation requires a very individualized approach which accounts for the duties, discretion, and
16 means of each defendant. Leer v. Murphy, 844 F.2d 628, 633–34(9th Cir. 1988) (citation omitted).
17 There must be an affirmative link between a defendant's actions and the claimed deprivation. See
18 Rizzo v. Goode, 423 U.S. 362 (1976). Plaintiff alleges that he personally informed S. Leon on many
19 occasions of Plaintiff’s living conditions when Defendant Leon escorted plaintiff to yard. Plaintiff
20 alleges that Defendant Leon refused to reassign his housing unit, or take corrective measures and that
21 she had had authority to make such reassignments. While Plaintiff’s allegations as to defendant
22 Leon’s authority are somewhat conclusory, they are not outside the realm of plausibility that Sgt.
23 Leon, knowing of the cell’s condition, had the authority to reassign Plaintiff’s housing or take
24 corrective measures.

25 3. R. Pavich

26 Plaintiff does not make any specific allegation against Defendant Pavich other than as to
27 Defendant’s job title. Plaintiff fails to make any allegation that Defendant Pavich knew of the
28 condition and disregarded it or had any authority to correct it or move Plaintiff’s cell assignment.

1 Plaintiff's claims must be facially plausible. Iqbal, 556 U.S. at 678. Since they are not, Plaintiff fails
2 to state a cognizable claim against Defendant Pavich.

3 **B. State Law Negligence Claim**

4 Under California law, '[t]he elements of negligence are: (1) defendant's obligation to conform
5 to a certain standard of conduct for the protection of others against unreasonable risks (duty); (2)
6 failure to conform to that standard (breach of duty); (3) a reasonably close connection between the
7 defendant's conduct and resulting injuries (proximate cause); and (4) actual loss (damages).' ” Corales
8 v. Bennett, 567 F.3d 554, 572 (9th Cir. 2009) (quoting McGarry v. Sax, 158 Cal. App. 4th 983, 994
9 (2008)). The Court may exercise supplemental jurisdiction over state law claims in any civil action in
10 which it has original jurisdiction, if the state law claims form part of the same case or controversy. 28
11 U.S.C. § 1367(a).

12 Liberally construed, Plaintiff has stated a cognizable state-law claim against Defendants
13 Llamas and Leon for negligence

14 **C. Declaratory Relief**

15 In addition to damages, Plaintiff seeks a declaration that his rights were violated. “A
16 declaratory judgment, like other forms of equitable relief, should be granted only as a matter of
17 judicial discretion, exercised in the public interest.” Eccles v. Peoples Bank of Lakewood Village, 333
18 U.S. 426, 431, 68 S.Ct. 641, 92 L.Ed. 784 (1948). “Declaratory relief should be denied when it will
19 neither serve a useful purpose in clarifying and settling the legal relations in issue nor terminate the
20 proceedings and afford relief from the uncertainty and controversy faced by the parties.” United States
21 v. Washington, 759 F.2d 1353, 1357 (9th Cir.1985). In the event that this action reaches trial and the
22 jury returns a verdict in favor of Plaintiff, the verdict will be a finding that Plaintiff's constitutional
23 rights were violated. Accordingly, a declaration that any defendant violated Plaintiff's rights is
24 unnecessary.

25 **IV. Conclusion and Order**

26 Plaintiff has stated a cognizable claim for violation of the Eighth Amendment against
27 Defendants Llamas and Leon in their individual capacities, and a state law negligence claim against
28 Defendants Llamas and Leon, but has failed to state any other cognizable claims. The Court will grant

1 Plaintiff a **final** opportunity to cure the identified deficiencies which Plaintiff believes, in good faith,
2 are curable. Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). If Plaintiff chooses to amend his
3 complaint, he may not change the nature of this suit by adding new, unrelated claims in his third
4 amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) (no “buckshot” complaints).

5 If Plaintiff does not wish to file an amended complaint and he is agreeable to proceeding only
6 on the cognizable Eighth Amendment and negligence claims identified by the Court, he may file a
7 notice informing the Court that he does not intend to amend and he is willing to proceed only on his
8 cognizable claims. The remaining defendant and claims will then be dismissed, and the Court will
9 provide Plaintiff with the requisite forms to complete and return so that service of process may be
10 initiated.

11 If Plaintiff chooses to file a third amended complaint, the amended complaint should be brief,
12 Fed. R. Civ. P. 8(a), but it must state what each named defendant did that led to the deprivation of
13 Plaintiff’s constitutional rights, Iqbal, 556 U.S. at 678-79, 129 S.Ct. at 1948-49. Although accepted as
14 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level. .
15 . . .” Twombly, 550 U.S. at 555 (citations omitted).

16 Finally, Plaintiff is advised that an amended complaint supersedes the original complaint.
17 Lacey, 693 F.3d at 927. Therefore, Plaintiff’s amended complaint must be “complete in itself without
18 reference to the prior or superseded pleading.” Local Rule 220.

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

- 20 1. The Clerk’s Office shall send Plaintiff a complaint form;
- 21 2. Within thirty (30) days from the date of service of this order, Plaintiff must either:
 - 22 a. File a third amended complaint curing the deficiencies identified by the Court in this
23 order, or
 - 24 b. Notify the Court in writing that he does not wish to file a third amended complaint and
25 he is willing to proceed only on the cognizable Eighth Amendment against Defendants Llamas and
26 Leon in their individual capacities, and a state law negligence claim against Defendants Llamas and
27 Leon; and

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3. **If Plaintiff fails to comply with this order, this action will be dismissed, without prejudice, for failure to obey a court order.**

IT IS SO ORDERED.

Dated: April 12, 2017

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE