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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PEDRO TEJEDA,

Plaintiff,

v.

MENDEZ, et al.,

Defendants.

CASE No. 1:16-cv-01792-MJS (PC)

**ORDER DISMISSING COMPLAINT WITH
LEAVE TO AMEND**

(ECF No. 1)

THIRTY (30) DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. His 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 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 dismiss the case at any time if the court

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

3 **II. Pleading Standard**

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

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

15 A complaint must contain “a short and plain statement of the claim showing that
16 the pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
17 are not required, but “[t]hreadbare recitals of the elements of a cause of action,
18 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 556 U.S.
19 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)).
20 Plaintiff must set forth “sufficient factual matter, accepted as true, to state a claim to relief
21 that is plausible on its face.” Id. Facial plausibility demands more than the mere
22 possibility that a defendant committed misconduct and, while factual allegations are
23 accepted as true, legal conclusions are not. Id. at 677-78.

24 **III. Plaintiff's Allegations**

25 Plaintiff is incarcerated at California Institution for Men (“CIM”) and complains of
26 acts that occurred there and at Avenal State Prison (“ASP”). He names the following
27 defendants: (1) Correctional Counselor (“CC”) 1 Mrs. Mendez, (2) CC1 Mr. Chavez, (3)
28 CC2 Mrs. Howard, (4) Mental Health Mrs. Burt, (5) J. Baxter, ADA Associate Warden,

1 (6) L. Jeffers, Appeals Coordinator, (7) T. Le, Chief Physician and Surgeon, (8) N. Riaz,
2 Physician Surgeon, (9) A. Valle, AGPA Health Care, (10) T. Lambert, Health Care
3 Appeals, (11) Dean Borders, Warden at CIM, and (12) Correctional Sergeant R. Matute.

4 Plaintiff's complaint contains no allegations. Instead, Plaintiff attaches to his
5 complaint, without explanation, a series of documents regarding a fall he suffered,
6 grievances regarding his placement at institutions far from his family, and general
7 paperwork regarding the Coleman class action. In the portion of the complaint titled
8 "Request for Relief," Plaintiff states that he is C.C.C.M.S.¹ and is
9 "stressing" because he is far from his family. "All" of the defendants are aware of this
10 circumstance. Nonetheless, he is housed far from his family in an institution where the
11 temperature is hot. Additionally, "they" tried to transfer Plaintiff to the Substance Abuse
12 Treatment Facility, where he may catch Valley Fever.

13 **IV. Analysis**

14 **A. Rule 8**

15 Plaintiff's complaint does not comport with the requirements of Rule 8.

16 The complaint does not contain "a short and plain statement of the claim." Fed. R.
17 Civ. P. 8(a)(2). Indeed, it contains no statement whatsoever of Plaintiff's claim. The
18 Court is unable to discern what, precisely, Plaintiff complains of or how any of the named
19 defendants participated in a deprivation of his rights.

20 Furthermore, the complaint does not contain "a demand for the relief sought."
21 Fed. R. Civ. P. 8(a)(3). The Court is unable to discern what result Plaintiff hopes to
22 achieve through this litigation.

23 Plaintiff will be given leave to amend.
24
25

26 ¹ CCCMS stands for Correctional Clinical Case Management Services, which is the lowest of the four
27 levels of care within the prison system's Mental Health Services Delivery Program. Coleman v.
28 Schwarzenegger, 922 F. Supp. 2d 882, 903 (E.D. Cal. 2009). "The CCCMS level of care is for inmates
whose symptoms are under control or in partial remission and can function in the general prison
population, administrative segregation, or segregated housing units." Id. at 903 n.24.

1 **B. Linkage**

2 Plaintiff is advised that, under § 1983, he must demonstrate that each named
3 defendant personally participated in the deprivation of his rights. Iqbal, 556 U.S. 662,
4 676-77 (2009); Simmons v. Navajo Cnty., Ariz., 609 F.3d 1011, 1020-21 (9th Cir. 2010);
5 Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th Cir. 2009); Jones v. Williams, 297
6 F.3d 930, 934 (9th Cir. 2002). Liability may not be imposed on supervisory personnel
7 under the theory of respondeat superior, as each defendant is only liable for his or her
8 own misconduct. Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at 1235. Supervisors may
9 only be held liable if they “participated in or directed the violations, or knew of the
10 violations and failed to act to prevent them.” Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
11 1989); accord Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011); Corales v. Bennett,
12 567 F.3d 554, 570 (9th Cir. 2009); Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479
13 F.3d 1175, 1182 (9th Cir. 2007); Harris v. Roderick, 126 F.3d 1189, 1204 (9th Cir. 1997).

14 Plaintiff’s complaint does not state any facts regarding how the defendants
15 allegedly participated in the denial of his rights. He fails to state a claim against them. He
16 will be given leave to amend.

17 **C. Placement Decisions**

18 To the extent Plaintiff’s complaint is predicated on his desire to be housed in a
19 different facility, he fails to state a constitutional claim. Prison inmates do not have a
20 constitutional right to be incarcerated at a particular correctional facility or to be
21 transferred from one facility to another. Meachum v. Fano, 427 U.S. 215, 224-25 (1976);
22 see also Olim v. Wakinekona, 461 U.S. 238, 244-45 (1983).

23 **D. Mental Health Care**

24 Plaintiff may intend to allege that Defendants acted with deliberate indifference to
25 his mental health needs. He will be provided the legal standard for such a claim, in the
26 event he chooses to amend.

27 The Eighth Amendment’s Cruel and Unusual Punishments Clause prohibits
28 deliberate indifference to the serious medical needs of prisoners. McGuckin v. Smith,

1 974 F.2d 1050, 1059 (9th Cir. 1992). A claim of medical indifference requires (1) a
2 serious medical need, and (2) a deliberately indifferent response by defendant. Jett v.
3 Penner, 439 F.3d 1091, 1096 (9th Cir. 2006). The deliberate indifference standard is met
4 by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible
5 medical need and (b) harm caused by the indifference. Id. Where a prisoner alleges
6 deliberate indifference based on a delay in medical treatment, the prisoner must show
7 that the delay led to further injury. See Hallett v. Morgan, 296 F.3d 732, 745-46 (9th Cir.
8 2002); McGuckin, 974 F.2d at 1060a; Shapley v. Nevada Bd. Of State Prison Comm'rs,
9 766 F.2d 404, 407 (9th Cir. 1985) (per curiam). Delay which does not cause harm is
10 insufficient to state a claim of deliberate medical indifference. Shapley, 766 F.2d at 407
11 (citing Estelle v. Gamble, 429 U.S. 97, 106 (1976)).

12 “Deliberate indifference is a high legal standard.” Toguchi v. Chung, 391 F.3d
13 1051, 1060 (9th Cir. 2004). “Under this standard, the prison official must not only ‘be
14 aware of the facts from which the inference could be drawn that a substantial risk of
15 serious harm exists,’ but that person ‘must also draw the inference.’” Id. at 1057 (quoting
16 Farmer v. Brennan, 511 U.S. 825, 837 (1994)). “If a prison official should have been
17 aware of the risk, but was not, then the official has not violated the Eighth Amendment,
18 no matter how severe the risk.” Id. (brackets omitted) (quoting Gibson, 290 F.3d at
19 1188). Mere indifference, negligence, or medical malpractice is not sufficient to support
20 the claim. Broughton v. Cutter Labs., 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle v.
21 Gamble, 429 U.S. 87, 105-06 (1976)). A prisoner can establish deliberate indifference by
22 showing that officials intentionally interfered with his medical treatment for reasons
23 unrelated to the prisoner’s medical needs. See Hamilton v. Endell, 981 F.2d 1062, 1066
24 (9th Cir. 1992); Estelle, 429 U.S. at 105.

25 **E. Coleman Class Action**

26 As stated, Plaintiff attaches to his complaint general documents regarding the
27 Coleman class action. While Plaintiff may allege independent claims for relief based on
28 violation of his rights under federal law, Hiser v. Franklin, 94 F.3d 1287, 1291 (9th Cir.

1 1996), Plaintiff may not rely on the violation of consent decrees or remedial plans in
2 other cases to state a claim, Frost v. Symington, 197 F.3d 348, 358-59 (9th Cir. 1999).
3 Relief for violation of consent decrees or remedial plans must be pursued in the case in
4 which the decree or plan was issued. Frost, 197 F.3d at 358-59; Crayton v. Terhune, No.
5 C 98-4386 CRB (PR), 2002 WL 31093590, *4 (N.D. Cal. Sept. 17, 2002).

6 **V. Conclusion and Order**

7 Plaintiff's complaint does not state a cognizable claim for relief. The Court will
8 grant Plaintiff an opportunity to file an amended complaint. Noll v. Carlson, 809 F.2d
9 1446, 1448-49 (9th Cir. 1987). If Plaintiff chooses to amend, he must demonstrate that
10 the alleged acts resulted in a deprivation of his constitutional rights. Iqbal, 556 U.S. at
11 677-78. Plaintiff must set forth "sufficient factual matter . . . to 'state a claim that is
12 plausible on its face.'" Id. at 678 (quoting Twombly, 550 U.S. at 555 (2007)). Plaintiff
13 must also demonstrate that each named Defendant personally participated in a
14 deprivation of his rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

15 Plaintiff should note that although he has been given the opportunity to amend, it
16 is not for the purposes of adding new claims. George v. Smith, 507 F.3d 605, 607 (7th
17 Cir. 2007). Plaintiff should carefully read this screening order and focus his efforts on
18 curing the deficiencies set forth above.

19 Finally, Plaintiff is advised that Local Rule 220 requires that an amended
20 complaint be complete in itself without reference to any prior pleading. As a general rule,
21 an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d
22 55, 57 (9th Cir. 1967). Once an amended complaint is filed, the original complaint no
23 longer serves any function in the case. Therefore, in an amended complaint, as in an
24 original complaint, each claim and the involvement of each defendant must be
25 sufficiently alleged. The amended complaint should be clearly and boldly titled "First
26 Amended Complaint," refer to the appropriate case number, and be an original signed
27 under penalty of perjury. Plaintiff's amended complaint should be brief. Fed. R. Civ. P.
28 8(a). Although accepted as true, the "[f]actual allegations must be [sufficient] to raise a

1 right to relief above the speculative level” Twombly, 550 U.S. at 555 (citations
2 omitted).

3 Accordingly, it is HEREBY ORDERED that:

- 4 1. Plaintiff’s complaint is dismissed for failure to state a claim upon which relief
5 may be granted;
- 6 2. The Clerk’s Office shall send Plaintiff a blank civil rights complaint form and a
7 copy of his complaint, filed November 28, 2016;
- 8 3. Within thirty (30) days from the date of service of this order, Plaintiff must file a
9 first amended complaint curing the deficiencies identified by the Court in this
10 order or a notice of voluntary dismissal; and
- 11 4. If Plaintiff fails to file an amended complaint or notice of voluntary dismissal,
12 the Court will dismiss this action, with prejudice, for failure to comply with a
13 court order and failure to state a claim, subject to the “three strikes” provision
14 set forth in in 28 U.S.C. § 1915(g).

15
16 IT IS SO ORDERED.

17 Dated: January 23, 2017

18 /s/ Michael J. Seng
19 UNITED STATES MAGISTRATE JUDGE