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

EDWARD MORRIS,	)	Case No.: 1:17-cv-00100-DAD - JLT
	)	
Plaintiff,	)	ORDER DISMISSING COMPLAINT WITH
	)	LEAVE TO AMEND
v.	)	
	)	
NORTH OF THE RIVER COMMUNITY	)	
HEALTH CENTER,	)	
	)	
Defendant.	)	
	)	

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Edward Morris is seeking to proceed *pro se* and *in forma pauperis* with an action against Clinica Siera Vista- North of the River Community Health Center. For the reasons set forth below, his complaint is **DISMISSED** with leave to amend.

**I. Screening Requirement**

When an individual seeks to proceed *in forma pauperis*, the Court is required to review the complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992).

1 **II. Pleading Standards**

2 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A  
3 pleading must include a statement affirming the court’s jurisdiction, “a short and plain statement of the  
4 claim showing the pleader is entitled to relief; and . . . a demand for the relief sought, which may  
5 include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a).

6 A complaint must give fair notice and state the elements of the plaintiff’s claim in a plain and  
7 succinct manner. *Jones v. Cmty Redevelopment Agency*, 733 F.2d 646, 649 (9th Cir. 1984). The  
8 Supreme Court noted,

9 Rule 8 does not require detailed factual allegations, but it demands more than an  
10 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
11 labels and conclusions or a formulaic recitation of the elements of a cause of action will  
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further  
factual enhancement.

12 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague  
13 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,  
14 268 (9th Cir. 1982). The Court clarified further,

15 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
16 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when  
17 the plaintiff pleads factual content that allows the court to draw the reasonable  
18 inference that the defendant is liable for the misconduct alleged. [Citation]. The  
19 plausibility standard is not akin to a “probability requirement,” but it asks for more than  
a sheer possibility that a defendant has acted unlawfully. [Citation]. Where a complaint  
pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of  
the line between possibility and plausibility of ‘entitlement to relief.’

20 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should  
21 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal  
22 conclusions are not entitled to the same assumption of truth. *Id.*

23 The Court may grant leave to amend a complaint to the extent deficiencies of the complaint can  
24 be cured by an amendment. *Lopez v. Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

25 **III. Factual Allegations**

26 Plaintiff alleges that on December 3, 2015, his hand was squeezed by the high blood pressure  
27 cuff at Clinica Sierra Vista- North of the River Community Health Center. (Doc. 1 at 5) He contends  
28 that it caused nerve damage, disabled his left arm and caused depression. (*Id.* at 4-5) In addition,

1 Plaintiff asserts he lost 20 pounds since that time, “can’t sleep on [his] left side,” and requires 24-hour  
2 care. (*Id.* at 5)

3 **IV. Discussion and Analysis**

4 **A. Federal Tort Claims Act**

5 Previously, this Court has recognized Clinica Sierra Vista is a federally funded healthcare  
6 facility, and the Court has jurisdiction over any tort claims alleged pursuant to 28 U.S.C. § 1346(b).  
7 *See Acuna v. County of Kern*, 2010 U.S. Dist. LEXIS 59214, at \*2 (E.D. Cal. June 15, 2010). Because  
8 Clinica Sierra Vista is a federally funded medical clinic, the proper defendant in the action is the  
9 United States. *See id.*

10 The Federal Tort Claims Act (“FTCA”) is the exclusive remedy against the United States for  
11 personal injuries “resulting from the performance of medical, surgical, dental, or related functions ...  
12 by any commissioned officer or employee of the Public Health Service ...” 42 U.S.C. § 233(a).  
13 Significantly, the FTCA’s coverage extends to entities deemed Public Health Service employees, such  
14 as federally supported medical clinics. 42 U.S.C. § 233(a). Accordingly, Plaintiff is required to  
15 comply with the FTCA to state a claim for medical malpractice.<sup>1</sup>

16 Under the FTCA, an “action shall not be instituted upon a claim against the United States for  
17 money damages” unless a plaintiff has exhausted administrative remedies. 28 U.S.C. § 2675(a). Thus,  
18 only after an administrative claim is denied, or deem denied, may a claimant file an action in federal  
19 court. *Id.* “The purpose of the FTCA’s administrative claim procedure is ‘to encourage administrative  
20 settlement of claims against the United States and thereby to prevent an unnecessary burdening of the  
21 courts.’” *Brady v. United States*, 2011 F.3d 499, 503 (9th Cir. 2000) (quoting *Jerves v. United States*,  
22 966 F.2d 517, 520 (9th Cir. 1992)). Further, exhaustion of administrative remedies is jurisdictional,  
23 and cannot be waived. *Id.* at 502; *see also Vacek v. United States Postal Service*, 447 F.3d 1248, 1250  
24 (9th Cir. 2006) (“We have repeatedly held that the exhaustion requirement is jurisdictional in nature  
25 and must be interpreted strictly.”). Specifically, the FTCA provides:

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28 <sup>1</sup> It is not clear whether Plaintiff seeks to state a claim for medical malpractice in this action, because he failed to  
clearly identify his claim(s). In the amended complaint, Plaintiff **SHALL** clearly identify the causes of action upon which  
he seeks to proceed.

1 An action shall not be instituted upon a claim against the United States for money  
2 damages ... unless the claimant shall have first presented the claim to the appropriate  
3 Federal agency and his claim shall have been finally denied by the agency in writing  
4 and sent by certified or registered mail. The failure of an agency to make final  
disposition of a claim within six months after it is filed shall, at the option of the  
claimant any time thereafter, be deemed a final denial of the claim for purposes of this  
section.

5 28 U.S.C. § 2675(a).

6 Plaintiff has failed to demonstrate compliance with the FTCA, or allege facts that support a  
7 conclusion that he has exhausted his administrative remedies prior to filing suit. Accordingly, the  
8 complaint should be dismissed with leave to amend, for Plaintiff to clarify the matter of this Court's  
9 jurisdiction.

10 **B. Medical Malpractice**

11 Even if Plaintiff had complied with the FTCA, he fails to state a cognizable claim for medical  
12 malpractice. Under California law, the elements of a medical malpractice claim include: "(1) a duty to  
13 use such skill, prudence, and diligence as other members of the profession commonly possess and  
14 exercise; (2) a breach of the duty; (3) a proximate causal connection between the negligent conduct  
15 and the injury; and (4) resulting loss or damage." *Hernandez ex rel. Telles-Hernandez v. United States*,  
16 665 F.Supp.2d 1064, 1076 (N.D. Cal. 2009) (citing *Hanson v. Grode*, 76 Cal.App.4th 601, 606  
17 (1999)).

18 Plaintiff has not alleged physicians failed to use the skills or diligence as commonly exercised  
19 in the profession, a breach of a duty, or negligent conduct. The facts alleged simply are insufficient to  
20 link an employee of Clinica Sierra Vista to the injury alleged.

21 **V. Leave to Amend the Complaint**

22 Leave to amend should be granted to the extent that the deficiencies of the complaint can be  
23 cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). The Court  
24 cannot find with certainty that Plaintiff cannot allege facts supporting a finding that the Court has  
25 jurisdiction over the matter. Further, Plaintiff may allege facts sufficient to support a claim for medical  
26 malpractice, if that is the claim upon which he seeks to proceed. Accordingly, the Court will grant  
27 Plaintiff leave to amend the complaint to cure the factual deficiencies of this complaint by alleging  
28 additional facts.

1 Plaintiff is advised that an amended complaint supersedes the original complaint. *Forsyth v.*  
2 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).  
3 In addition, the amended complaint must be “complete in itself without reference to the prior or  
4 superseded pleading.” Local Rule 220. Once Plaintiff files an amended complaint, the original  
5 pleading no longer serves any function in the case.

6 The amended complaint must bear the docket number assigned this case and must be labeled  
7 “First Amended Complaint.” Finally, Plaintiff is warned that “[a]ll causes of action alleged in an  
8 original complaint which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814  
9 F.2d 565, 567 (9th Cir. 1986) (citing *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981)).

10 Accordingly, the Court **ORDERS**:

- 11 1. Plaintiff’s complaint is **DISMISSED** with leave to amend; and
- 12 2. Plaintiff is **GRANTED** 30 days from the date of service of this order to file an  
13 amended complaint that complies with the requirements of the pertinent substantive  
14 law, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

15 **Plaintiff is advised that failure to file an amended complaint will be considered to be a failure to**  
16 **comply with a Court’s order, and may result in dismissal of this action.**

17  
18 IT IS SO ORDERED.

19 Dated: January 26, 2017

/s/ Jennifer L. Thurston  
20 UNITED STATES MAGISTRATE JUDGE