

- 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**

JUAN MONTENEGRO, ) Case No.: 1:17-cv-00422-AWI-SAB (PC)  
 )  
 Plaintiff, )  
 )  
 v. ) ORDER DISMISSING FIRST AMENDED  
 ) COMPLAINT, AND GRANTING PLAINTIFF  
 ) ONE FINAL OPPORTUNITY TO FILE A  
 DR. SCHRFFENBERG, et.al., ) SECOND AMENDED COMPLAINT  
 )  
 Defendants. ) [ECF No. 9]  
 )  
 )

Plaintiff Juan Montenegro is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(1)(B) and Local Rule 302. Pending before the Court is Plaintiff's first amended complaint, filed June 5, 2017, in response to the May 8, 2017, order dismissing the original complaint and granting Plaintiff leave to file an amended complaint. (ECF Nos. 7, 9.)

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

1 A complaint must contain “a short and plain statement of the claim showing that the pleader is  
2 entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not required, but  
3 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements,  
4 do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Bell Atlantic Corp. v. Twombly,  
5 550 U.S. 544, 555 (2007)). Plaintiff must demonstrate that each named defendant personally  
6 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,  
7 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

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

## 16 II.

### 17 COMPLAINT ALLEGATIONS

18 Plaintiff has serious injuries on his body that cause him tremendous and excruciating pain.  
19 One doctor prescribed pain medication to alleviate his pain. Defendant Dr. Schrffenberg was aware  
20 that Plaintiff had tremendous and excruciating pain due to his serious injuries. Dr. Schrffenberg took  
21 Plaintiff’s pain medication causing him to suffer pain.

22 Defendant Nurse Jane Doe gave Plaintiff psychotropic medication which caused nausea and  
23 suicidal ideations.

24 Plaintiff requests punitive and compensatory damages for his pain and suffering.

25 ///

26 ///

27 ///

28 ///

1 III.

2 DISCUSSION

3 A. Deliberate Indifference to Serious Medical Need

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 to  
6 an inmate's serious medical needs. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012), overruled  
7 in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-83 (9th Cir. 2014); Wilhelm v.  
8 Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012); Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006).  
9 Plaintiff "must show (1) a serious medical need by demonstrating that failure to treat [his] condition  
10 could result in further significant injury or the unnecessary and wanton infliction of pain," and (2) that  
11 "the defendant's response to the need was deliberately indifferent." Wilhelm, 680 F.3d at 1122 (citing  
12 Jett, 439 F.3d at 1096). Deliberate indifference is shown by "(a) a purposeful act or failure to respond  
13 to a prisoner's pain or possible medical need, and (b) harm caused by the indifference." Wilhelm, 680  
14 F.3d at 1122 (citing Jett, 439 F.3d at 1096). The requisite state of mind is one of subjective  
15 recklessness, which entails more than ordinary lack of due care. Snow, 681 F.3d at 985 (citation and  
16 quotation marks omitted); Wilhelm, 680 F.3d at 1122.

17 "A difference of opinion between a physician and the prisoner - or between medical  
18 professionals - concerning what medical care is appropriate does not amount to deliberate  
19 indifference." Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing Sanchez v. Vild, 891 F.2d  
20 240, 242 (9th Cir. 1989)), overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076, 1082-  
21 83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122-23 (9th Cir. 2012) (citing Jackson v.  
22 McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)). Rather, Plaintiff "must show that the course of treatment  
23 the doctors chose was medically unacceptable under the circumstances and that the defendants chose  
24 this course in conscious disregard of an excessive risk to [his] health." Snow, 681 F.3d at 988 (citing  
25 Jackson, 90 F.3d at 332) (internal quotation marks omitted).

26 "Medical malpractice does not become a constitutional violation merely because the victim is a  
27 prisoner." Estelle v. Gamble, 429 U.S. 97, 106, 97 S.Ct. 285 (1977); Snow v. McDaniel, 681 F.3d at  
28 987-88; Wilhelm v. Rotman, 680 F.3d at 1122. Isolated occurrences of neglect do not rise to the level

1 of an Eighth Amendment violation. O’Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) (quotation  
2 marks omitted); Wood v. Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990).

3 Plaintiff’s allegations in the first amended complaint suffer from the same defects as his  
4 original complaint, and Plaintiff’s allegations fail to give rise to a constitutional violation under the  
5 Eighth Amendment. First, Plaintiff fails to demonstrate that he was suffering from a serious medical  
6 condition. Plaintiff alleges only that he has “serious injuries” to his body which cause him tremendous  
7 pain. Such conclusory and vague allegations fail to meet the objective prong for an Eighth  
8 Amendment violation. Second, Plaintiff fails to set forth facts to demonstrate that either Defendant  
9 knew of and disregarded an excessive risk to a *serious* medical need or that any medical care was  
10 purposeful and more than mere negligence. As Plaintiff was previously advised, even if he was  
11 previously prescribed pain medication by a different doctor, such fact, alone, does not give rise to a  
12 claim for deliberate indifference because differences of opinion in medical treatment between doctors  
13 is insufficient. Wilhelm, 680 F.3d at 1122. Accordingly, Plaintiff fails to state a cognizable claim for  
14 relief and Plaintiff will be given one final opportunity to file an amended complaint if he believes he  
15 can do so in good faith.

### 16 III.

### 17 CONCLUSION AND ORDER

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

23 Plaintiff’s amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what each  
24 named defendant did that led to the deprivation of Plaintiff’s constitutional or other federal rights.  
25 Iqbal, 556 U.S. 662, 678. “The inquiry into causation must be individualized and focus on the duties  
26 and responsibilities of each individual defendant whose acts or omissions are alleged to have caused a  
27 constitutional deprivation.” Leer v. Murphy, 844 F.2d 628, 633 (9th Cir. 1988). Although accepted as

28 ///

1 true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level .  
2 . .” Twombly, 550 U.S. at 555 (citations omitted).

3 Finally, an amended complaint supersedes the original complaint, Forsyth v. Humana, Inc.,  
4 114 F.3d 1467, 1474 (9th Cir. 1997); King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987), and must be  
5 “complete in itself without reference to the prior or superseded pleading,” Local Rule 220. “All  
6 causes of action alleged in an original complaint which are not alleged in an amended complaint are  
7 waived.” King, 814 F.2d at 567 (citing to London v. Coopers & Lybrand, 644 F.2d 811, 814 (9th Cir.  
8 1981)); accord Forsyth, 114 F.3d at 1474.

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

- 10 1. The Clerk’s Office shall send Plaintiff an amended civil rights complaint form;
- 11 2. Plaintiff’s first amend complaint, filed June 5, 2017, is dismissed for failure to state a  
12 claim;
- 13 3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an  
14 amended complaint; and
- 15 4. If Plaintiff fails to file an amended complaint in compliance with this order, this action  
16 will be dismissed for failure to state a claim.

17  
18 IT IS SO ORDERED.

19 Dated: **June 13, 2017**

  
UNITED STATES MAGISTRATE JUDGE