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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CRAIG BUCHANAN,) Case No.: 1:17-cv-00990-SAB (PC)
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12 Plaintiff,)
13 v.) ORDER DISMISSING COMPLAINT, WITH
14) LEAVE TO AMEND FOR FAILURE TO STATE A
SHIPMAN, et al.,) COGNIZABLE CLAIM FOR RELIEF, AND
15 Defendants.) DENYING, WITHOUT PREJUDICE,
) PLAINTIFF'S MOTION FOR APPOINTMENT OF
) COUNSEL
16) [ECF Nos. 1, 9]

17 Plaintiff Craig Buchanan is appearing pro se and in forma pauperis in this civil rights action
18 pursuant to 42 U.S.C. § 1983. Pursuant to 28 U.S.C. § 636(c), Plaintiff consented to the jurisdiction of
19 the United States Magistrate Judge on August 9, 2017. Local Rule 302.

20 Currently before the Court is Plaintiff's complaint, filed July 19, 2017, filed in the United
21 States District Court for the Eastern District of California, Sacramento Division. The action was
22 transferred to this Court on July 26, 2017.

23 **I.**

24 **SCREENING REQUIREMENT**

25 The Court is required to screen complaints brought by prisoners seeking relief against a
26 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court
27 must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous
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1 or malicious,” that “fail to state a claim on which relief may be granted,” or that “seek monetary relief
2 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

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 (2009) (citing Bell Atlantic Corp. v. Twombly,
7 550 U.S. 544, 555 (2007)). Moreover, Plaintiff must demonstrate that each defendant personally
8 participated in the deprivation of Plaintiff’s rights. Jones v. Williams, 297 F.3d 930, 934 (9th Cir.
9 2002).

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

18 Notwithstanding any filing fee, the district court must perform a preliminary screening and
19 must dismiss a case if at any time the Court determines that the complaint “(i) is frivolous or
20 malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief
21 against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2); see Lopez v. Smith,
22 203 F.3d 1122, 1129 (9th Cir. 2000) (section 1915(e) applies to all in forma pauperis complaints, not
23 just those filed by prisoners); Calhoun v. Stahl, 254 F.3d 845 (9th Cir. 2001) (dismissal required of in
24 forma pauperis proceedings which seek monetary relief from immune defendants); Cato v. United
25 States, 70 F.3d 1103, 1106 (9th Cir. 1995) (district court has discretion to dismiss in forma pauperis
26 complaint under 28 U.S.C. § 1915(e)); Barren v. Harrington, 152 F.3d 1193 (9th Cir. 1998) (affirming
27 sua sponte dismissal for failure to state a claim).

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II.

COMPLAINT ALLEGATIONS

3 Plaintiff's claims are vague and conclusory in nature. He names three different Defendants at
4 three different prison facilities. Plaintiff contends that approximately 18 years ago, he acquired
5 Hepatitis C while housed at Corcoran State Prison by using someone else's razor blade. Plaintiff
6 contends that "defendants refused to carry out a treatment plan in order to create a genuine issue of
7 material fact surrounding the objective component of the eighth amendment. The defendants
8 accomplished this fact by profiling the plaintiff as a conflict case, the purpose of this illegality a means
9 for third party to address a confidentiality clause that will afford the equal protection clause the
10 necessary vail." (Compl. at 4-5.) Plaintiff contends he was subjected to three attempts at a biopsy in a
11 single session, and Defendants interfered with the treatment plan on three separate occasions. Plaintiff
12 contends that he was denied access to medical specialists qualified to perform a biopsy. Plaintiff seeks
13 three million dollars in damages.

III.

DISCUSSION

A. Federal Rule of Civil Procedure 8

17 Plaintiff's allegations are so vague and conclusory that the Court is unable to determine
18 whether the claims are frivolous, fanciful, or if the complaint fails to state a claim for relief. Although
19 the Federal Rules adopt a flexible pleading policy, a complaint must give fair notice to the defendants
20 and must allege facts that support the elements of the claim plainly and succinctly. Jones v.
21 Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must allege with at least
22 some degree of particularity overt acts which defendants engaged in that support his claims. General
23 allegations against all "defendants" collectively regarding insufficient medical treatment are not
24 sufficient to state a claim.

B. Federal Rules of Civil Procedure 18 and 20

26 A basic lawsuit is a single claim against a single defendant. Federal Rule of Civil Procedure
27 18(a) allows a plaintiff to add multiple claims to the lawsuit when they are against the same defendant.
28 Federal Rule of Civil Procedure 20(a)(2) allows a plaintiff to join multiple defendants to a lawsuit

1 where the right to relief arises out of the same “transaction, occurrence, or series of transactions” and
2 “any question of law or fact common to all defendants will arise in the action.” However, unrelated
3 claims that involve different defendants must be brought in separate lawsuits. See George v. Smith,
4 507 F.3d 605, 607 (7th Cir. 2007). This rule is not only intended to avoid confusion that arises out of
5 bloated lawsuits, but also to ensure that prisoners pay the required filing fees for their lawsuits and
6 prevent prisoners from circumventing the three strikes rule under the Prison Litigation Reform Act.
7 28 U.S.C. § 1915(g).

8 The Court advises Plaintiff that each claim that is raised in his first amended complaint must be
9 permitted by either Rule 18 or Rule 20. Plaintiff may state a single claim against a single defendant.
10 Plaintiff may then add any additional claims to his action that are against the same defendant under
11 Rule 18. Fed. R. Civ. P. 18. Plaintiff may also add any additional claims against other defendants if
12 those claims arise from the same transaction, occurrence, or series of transactions as his original claim.
13 Fed. R. Civ. P. 20(a)(2). Any attempt to join claims that are not permitted by the Federal Rules of
14 Civil Procedure will result in those claims being dismissed or severed as improperly joined.

15 **C. Supervisory Liability and Personal Participation**

16 Section 1983 provides a cause of action for the violation of Plaintiff’s constitutional or other
17 federal rights by persons acting under color of state law. Nurre v. Whitehead, 580 F.3d 1087, 1092
18 (9th Cir 2009); Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006); Jones v.
19 Williams, 297 F.3d 930, 934 (9th Cir. 2002). “Section 1983 is not itself a source of substantive rights,
20 but merely provides a method for vindicating federal rights elsewhere conferred.” Crowley v. Nevada
21 ex rel. Nevada Sec’y of State, 678 F.3d 730, 734 (9th Cir. 2012) (citing Graham v. Connor, 490 U.S.
22 386, 393-94 (1989)) (internal quotation marks omitted). To state a claim, Plaintiff must allege facts
23 demonstrating the existence of a link, or causal connection, between each defendant’s actions or
24 omissions and a violation of his federal rights. Lemire v. California Dep’t of Corr. and Rehab., 726
25 F.3d 1062, 1074-75 (9th Cir. 2013); Starr v. Baca, 652 F.3d 1202, 1205-08 (9th Cir. 2011).

26 Supervisory personnel may not be held liable under section 1983 for the actions of subordinate
27 employees based on *respondeat superior*, or vicarious liability. Crowley v. Bannister, 734 F.3d 967,
28 977 (9th Cir. 2013); accord Lemire v. California Dep’t of Corr. and Rehab., 726 F.3d 1062, 1074-75

1 (9th Cir. 2013); Lacey v. Maricopa County, 693 F.3d 896, 915-16 (9th Cir. 2012) (en banc). “A
2 supervisor may be liable only if (1) he or she is personally involved in the constitutional deprivation,
3 or (2) there is a sufficient causal connection between the supervisor’s wrongful conduct and the
4 constitutional violation.” Crowley, 734 F.3d at 977 (citing Snow v. McDaniel, 681 F.3d 978, 989 (9th
5 Cir. 2012) (internal quotation marks omitted); accord Lemire, 726 F.3d at 1074-75; Lacey, 693 F.3d at
6 915-16. “Under the latter theory, supervisory liability exists even without overt personal participation
7 in the offensive act if supervisory officials implement a policy so deficient that the policy itself is a
8 repudiation of constitutional rights and is the moving force of a constitutional violation.” Crowley,
9 734 F.3d at 977 (citing Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989)) (internal quotation marks
10 omitted).

11 Here, Plaintiff fails to link any of the named Defendants to an affirmative action or inaction
12 giving rise to his alleged constitutional violations. In addition, Plaintiff names Warden Shipman as a
13 Defendant; however, there can be no liability under section 1983 based on respondeat superior.

14 **D. Deliberate Indifference to Serious Medical Need**

15 A prisoner’s claim of inadequate medical care does not constitute cruel and unusual
16 punishment in violation of the Eighth Amendment unless the mistreatment rises to the level of
17 “deliberate indifference to serious medical needs.” Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)
18 (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). The two part test for deliberate indifference
19 requires Plaintiff to show (1) “a ‘serious medical need’ by demonstrating that failure to treat a
20 prisoner’s condition could result in further significant injury or the ‘unnecessary and wanton infliction
21 of pain,’” and (2) “the defendant’s response to the need was deliberately indifferent.” Jett, 439 F.3d at
22 1096. A defendant does not act in a deliberately indifferent manner unless the defendant “knows of
23 and disregards an excessive risk to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825, 837
24 (1994).

25 “Deliberate indifference is a high legal standard,” Simmons v. Navajo County Ariz., 609 F.3d
26 1011, 1019 (9th Cir. 2010); Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004), and is shown
27 where there was “a purposeful act or failure to respond to a prisoner’s pain or possible medical need”
28 and the indifference caused harm. Jett, 439 F.3d at 1096. Mere ‘indifference,’ ‘negligence,’ or

1 ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter Laboratories, 622
2 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06). “Medical malpractice does not
3 become a constitutional violation merely because the victim is a prisoner.” Estelle, at 106; Snow v.
4 McDaniel, 681 F.3d at 987-88, overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076,
5 1082-83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012) (“The deliberate
6 indifference doctrine is limited in scope.”).

7 Further, “[a] difference of opinion between a physician and the prisoner—or between medical
8 professionals—concerning what medical care is appropriate does not amount to deliberate
9 indifference.” Snow, 681 F.3d at 987 (citing Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989));
10 Wilhelm, 680 F.3d at 1122-23 (citing Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1986)). Rather,
11 a plaintiff is required to show that the course of treatment selected was “medically unacceptable under
12 the circumstances” and that the defendant “chose this course in conscious disregard of an excessive
13 risk to plaintiff’s health.” Snow v. McDaniel, 681 F.3d 978, 988 (9th Cir. 2012) (quoting Jackson, 90
14 F.3d at 332).

15 Here, Plaintiff alleges that he has chronic Hepatitis C, but he does not state any facts showing
16 that a failure to treat the condition will result in a significant injury. In addition, Plaintiff fails to
17 allege specific factual circumstances as to each named Defendant to demonstrate deliberate
18 indifference to a serious medical need. As stated above, a difference in medical opinion, or even
19 negligence, is not sufficient to state an Eighth Amendment violation. Plaintiff must meet the standards
20 explained above. Plaintiff’s conclusory allegations that his medical care is not appropriate, or that the
21 delay in treatment is causing harm, are not sufficient. Plaintiff must allege sufficient facts to show that
22 each Defendant is aware of a serious medical need and was deliberately indifferent to that need.
23 Plaintiff will be granted leave amend his allegations to cure these deficiencies.

24 **E. Equal Protection Clause**

25 The Equal Protection Clause requires that persons who are similarly situated be treated alike.
26 City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985); Hartmann v. California
27 Dep’t of Corr. & Rehab., 707 F.3d 1114, 1123 (9th Cir. 2013); Furnace v. Sullivan, 705 F.3d 1021,
28 1030 (9th Cir. 2013); Shakur v. Schriro, 514 F.3d 878, 891 (9th Cir. 2008). To state a claim, Plaintiff

1 must show that Defendants intentionally discriminated against him based on his membership in a
2 protected class. Hartmann, 707 F.3d at 1123; Furnace, 705 F.3d at 1030; Serrano v. Francis, 345 F.3d
3 1071, 1082 (9th Cir. 2003); Lee v. City of Los Angeles, 250 F.3d 668, 686 (9th Cir. 2001).

4 Plaintiff's complaint is devoid of any factual allegations giving rise to a claim under the Equal
5 Protection Clause. Accordingly, Plaintiff fails to state a cognizable claim for relief.

6 **F. Conspiracy**

7 To the extent Plaintiff is attempting to present a claim for conspiracy, Plaintiff is advised to state a
8 claim for conspiracy under section 1983, Plaintiff must show the existence of an agreement or a
9 meeting of the minds to violate his constitutional rights, and an actual deprivation of those
10 constitutional rights. Avalos v. Baca, 596 F.3d 583, 592 (9th Cir. 2010); Franklin v. Fox, 312 F.3d
11 423, 441 (9th Cir. 2001). Plaintiff has not alleged sufficient facts to support a claim for conspiracy.
12 Accordingly, Plaintiff fails to state a cognizable conspiracy claim.

13 **G. California Code of Civil Procedure Section 387(a)**

14 Section 387 subdivision (a) states in relevant part:

15 Upon timely application, any person, who has an interest in the matter in litigation, or in the
16 success of either of the parties, or an interest against both, may intervene in the action or
17 proceeding. An intervention takes place when a third person is permitted to become a party to
18 an action or proceeding between other persons, either by joining the plaintiff in claiming what
19 is sought by the complaint, or by uniting with the defendant in resisting the claims of the
plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is
made by complaint, setting forth the grounds upon which the intervention rests....

20 Cal. Code. Civ. Proc. § 387(a).

21 The Court cannot decipher the nature and application of section 387(a) to the instant civil
22 rights action of which he is the Plaintiff.

23 **H. Motion for Appointment of Counsel**

24 On August 7, 2017, Plaintiff filed a motion for appointment of counsel. Plaintiff does not have
25 a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th
26 Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. §
27 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296,
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1 298 (1989). However, in certain exceptional circumstances the court may request the voluntary
2 assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

3 Without a reasonable method of securing and compensating counsel, the court will seek
4 volunteer counsel only in the most serious and exceptional cases. In determining whether
5 "exceptional circumstances exist, the district court must evaluate both the likelihood of success on the
6 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
7 legal issues involved." Id. (internal quotation marks and citations omitted).

8 In the present case, the court does not find the required exceptional circumstances. Even if it
9 assumed that plaintiff is not well versed in the law and that he has made serious allegations which, if
10 proved, would entitle him to relief, his case is not exceptional. The legal issues present in this action
11 are not complex. In addition, because the Court is dismissing the complaint, with leave to amend, for
12 failure to state a cognizable claim, Plaintiff has not demonstrated likelihood to succeed on the merits.
13 Id. Accordingly, Plaintiff's motion for the appointment of counsel is denied, without prejudice.

14 **IV.**

15 **CONCLUSION AND ORDER**

16 For the reasons stated, Plaintiff's complaint fails to state a claim upon which relief may be
17 granted. The Court strongly doubts that Plaintiff will plead a viable claim based on the allegations
18 here, but will nevertheless allow him an opportunity to file an amended complaint to attempt to state a
19 cognizable claim. Noll v. Carlson, 809 F.2d 1446, 1448-49 (9th Cir. 1987). Plaintiff's amended
20 complaint must be filed within thirty (30) days, and Plaintiff may not change the nature of this suit by
21 adding new, unrelated claims in his amended complaint. George v. Smith, 507 F.3d 605, 607 (7th Cir.
22 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
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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 to Plaintiff a civil rights complaint form;
- 11 2. Plaintiff’s motion for appointment of counsel is denied, without prejudice;
- 12 3. Plaintiff’s complaint, filed July 19, 2017, is dismissed for the failure to state a claim
upon which relief may be granted, with leave to amend;
- 14 4. Within thirty (30) days from the date of service of this order, Plaintiff shall file an
amended complaint or a notice of voluntary dismissal; and
- 16 5. If Plaintiff fails to file an amended complaint, this action will be dismissed for failure to
state a claim and the failure to obey a court order.

18
19 IT IS SO ORDERED.

20 Dated: August 16, 2017



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UNITED STATES MAGISTRATE JUDGE

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