

1 “frivolous or malicious,” that “fails to state a claim on which relief may be granted,” or that “seeks
2 monetary relief 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)). Plaintiff must demonstrate that each named defendant personally
8 participated in the deprivation of his rights. Iqbal, 556 U.S. at 676-677; Simmons v. Navajo County,
9 Ariz., 609 F.3d 1011, 1020-1021 (9th Cir. 2010).

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

19 II.

20 COMPLAINT ALLEGATIONS

21 As with Plaintiff’s original complaint, the allegations in the first amended complaint are vague
22 and conclusory. Although the Federal Rules adopt a flexible pleading policy, a complaint must give
23 fair notice to the defendants and must allege facts that support the elements of the claim plainly and
24 succinctly. Jones v. Community Redev. Agency, 733 F.2d 646, 649 (9th Cir. 1984). Plaintiff must
25 allege with at least some degree of particularity overt acts which defendants engaged in that support
26 his claims.

27 Plaintiff names “John Doe”, on behalf of third party and the California Department of
28 Correctional Medical Personnel as Defendants. Under section 1983, Plaintiff must link the named

1 defendants to the participation in the violation at issue. Ashcroft v. Iqbal, 556 U.S. at 676-77;
2 Simmons v. Navajo County, Ariz., 609 F.3d at 1020-21; Ewing v. City of Stockton, 588 F.3d 1218,
3 1235 (9th Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002).

4 Plaintiff contends he is involved in a third party conspiracy, not only to infect him with an
5 infectious disease, but to also deny him the necessary medical treatment to rid the virus from his body.
6 “The purpose of the illegality is to validate third party interest in the Recovery of Unclaimed Accounts
7 particular to ‘the gulf war’ of 1991 and Declaration of War dated 3-19-03.” (1st Amd. Compl. at 2,
8 ECF No. 12.)

9 The defendants are identified as Security Personnel assigned to the segregated housing unit at
10 Corcoran State Prison at or near the time that California would amend their Government Code to
11 include California Tribal-Gaming Compact and the Medical Personnel at both Corcoran State Prison
12 and Salinas Valley State Prison from 1997-2001.

13 Plaintiff acquired Hepatitis C in 1999 while housed at Corcoran State Prison. Every few days
14 in the segregated housing unit, the inmates were allowed to shave using disposable razors. As a
15 common practice, unit security would carry the disposable razors in their vests. The razors were only
16 allowed to be used when the inmate was taking a shower, and not all inmates would shower when give
17 the opportunity. It was clear from the inmate population that they were sharing and using each other’s
18 razors.

19 Plaintiff visited Dr. Robertson (now deceased) on June 1, 1999. At this visit, a biopsy was
20 approved and performed by prison medical personnel. Plaintiff acquired Hepatitis C when given
21 someone else’s razor to shave with. Dr. Robertson made three attempts to secure a sample of
22 Plaintiff’s liver. As a result, Plaintiff was started on a program of drugs to treat the virus and was then
23 transferred from Corcoran State Prison to Salinas Valley State Prison. The program and treatment of
24 the virus was interfered with and Plaintiff was deemed a program failure.

25 Defendant John Doe should have known that Hepatitis C could be spread with the use of razor.
26 “These matters occurred based on third party entitlements and Required Conditions on Attachments,
27 the Recovery of Unclaimed Accounts belonging to the middle east a means for John Doe to address
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1 the Samuels doctrine as a continuing act in conspiracy centered around a date of creation in January
2 16, 1991.” (1st Amd. Compl. at 3-4.)

3 “Plaintiff alleges prison health care staff in making an informed decision to keep the question
4 of malice a constitutional rights violation set out to convince Dr. Hoffman to sign off on the procedure
5 Dr. Robertson would perform. Plaintiff further alleges this assignment to lien on the plaintiff’s
6 nongeneral powers was in fact a fraudulent plan and conspiracy targeting ‘the gift’ made available on
7 January 16, 1991.” (Id. at 4.)

8 III.

9 DISCUSSION

10 A. Deliberate Indifference to Serious Medical Needs

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

21 “Deliberate indifference is a high legal standard,” Simmons v. Navajo County Ariz., 609 F.3d
22 1011, 1019 (9th Cir. 2010); Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004), and is shown
23 where there was “a purposeful act or failure to respond to a prisoner’s pain or possible medical need”
24 and the indifference caused harm. Jett, 439 F.3d at 1096. Mere ‘indifference,’ ‘negligence,’ or
25 ‘medical malpractice’ will not support this cause of action.” Broughton v. Cutter Laboratories, 622
26 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06). “Medical malpractice does not
27 become a constitutional violation merely because the victim is a prisoner.” Estelle, at 106; Snow v.
28 McDaniel, 681 F.3d at 987-88, overruled in part on other grounds, Peralta v. Dillard, 744 F.3d 1076,

1 1082-83 (9th Cir. 2014); Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012) (“The deliberate
2 indifference doctrine is limited in scope.”).

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

11 Here, Plaintiff alleges that he has chronic Hepatitis C, but he does not state any facts showing
12 that a failure to treat the condition will result in a significant injury. As stated above, a difference in
13 medical opinion, or even negligence, is not sufficient to state an Eighth Amendment violation.
14 Plaintiff’s conclusory allegation that his medical care is not appropriate is not sufficient. Plaintiff has
15 failed to allege sufficient facts to show that any prison official was aware of a serious medical need
16 and was deliberately indifferent to that need. Accordingly, Plaintiff fails to state a cognizable claim
17 for deliberate indifference under the Eighth Amendment.

18 **B. Statute of Limitations**

19 In addition, Plaintiff’s claim that Defendant John Doe should have known that sharing razors
20 could subject him to an infectious disease, it is clear Plaintiff’s claim is barred by the applicable statute
21 of limitations.

22 Federal law determines when a claim accrues, and “[u]nder federal law, a claim accrues when
23 the plaintiff knows or has reason to know of the injury which is the basis of the action.” Maldonado v.
24 Harris, 370 F.3d 945, 955 (9th Cir. 2004); Fink v. Shedler, 192 F.3d 911, 914 (9th Cir. 1999).
25 Because section 1983 contains no specific statute of limitation, federal courts should apply the forum
26 state’s statute of limitations for personal injury actions. Jones v. Blanas, 393 F.3d 918, 927 (9th Cir.
27 2004); Maldonado, 370 F.3d at 954; Fink, 192 F.3d at 914. California’s statute of limitations for
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1 personal injury actions was extended to two years effective January 1, 2003. Cal. Civ. Proc. Code §
2 335.1 (West 2007); Jones, 393 F.3d at 927; Maldonado, 370 F.3d at 954-55.

3 In actions where the federal court borrows the state statute of limitation, the court should also
4 borrow all applicable provisions for tolling the limitations period found in state law. Jones, 393 F.3d
5 at 927. Under California law, prisoners who at the time the cause of action accrued were either
6 imprisoned on a criminal charge or serving a sentence of less than life for a criminal conviction enjoy
7 a two-year tolling provision for damages actions. Cal. Civ. Proc. Code § 352.1 (West 2007).

8 In addition, California's equitable tolling doctrine "applies when an injured person has several
9 legal remedies and, reasonably and in good faith, pursues one." McDonald v. Antelope Valley
10 Community College Dist., 45 Cal.4th 88, 100 (Cal. 2008) (citation and internal quotation marks
11 omitted). The equitable tolling of statutes of limitations is a judicially created, nonstatutory doctrine
12 designed to prevent unjust and technical forfeitures of the right to a trial on the merits when the
13 purpose of the statute of limitations - timely notice to the defendant of the plaintiff's claims - has been
14 satisfied, McDonald, 45 Cal.4th at 99 (quotation marks and citations omitted), and pursuit of
15 administrative remedies equitably tolls the statute of limitations so long as there was timely notice,
16 lack of prejudice to the defendant, and reasonable, good faith conduct on the part of the plaintiff, id. at
17 101-103.

18 The Ninth Circuit has held that prisoners are entitled to equitable tolling of the statute of
19 limitations while completing the mandatory exhaustion process. Brown v. Valoff, 422 F.3d 926, 942-
20 943 (9th Cir. 2005). The equitable tolling of statutes of limitations is a judicially created, nonstatutory
21 doctrine designed to prevent unjust and technical forfeitures of the right to a trial on the merits when
22 the purpose of the statute of limitations-timely notice to the defendant of the plaintiff's claims-has
23 been satisfied, McDonald, 45 Cal.4th at 99 (quotation marks and citations omitted), and pursuit of
24 administrative remedies equitably tolls the statute of limitations so long as there was timely notice,
25 lack of prejudice to the defendant, and reasonable, good faith conduct on the part of the plaintiff. Id.
26 at 101-03.

27 In this case, the alleged wrongful act, over which this Court would have jurisdiction, occurred
28 in 1999 at Corcoran State Prison, eighteen years prior to the date the instant action was filed. There

1 are no facts in the complaint that set forth any applicable tolling of the limitations period, and
2 therefore the claim is barred by the statute of limitations. See Watison v. Carter, 668 F.3d 1108, 1112
3 (9th Cir. 2012) (screening standard for failure to state a claim the same as the Fed. R. Civ. P. 12(b)(6)
4 standard); Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 969 (9th Cir. 2010)
5 (claim may be dismissed under Fed. R. Civ. P. 12(b)(6) as barred by the statute of limitation when the
6 running of the statute is apparent on the face of the complaint).

7 **C. Conspiracy**

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

14 **IV.**

15 **CONCLUSION AND ORDER**

16 Plaintiff was previously notified of the applicable legal standards and the deficiencies in his
17 pleading, and despite guidance from the Court, Plaintiff's first amended complaint is largely identical
18 to the original complaint. Based upon the allegations in Plaintiff's original and first amended
19 complaint, the Court is persuaded that Plaintiff is unable to allege any additional facts that would
20 support a claim for cruel and unusual punishment in violation of the Eighth Amendment, and further
21 amendment would be futile. See Hartmann v. CDCR, 707 F.3d 1114, 1130 (9th Cir. 2013) ("A district
22 court may not deny leave to amend when amendment would be futile.") Based on the nature of the
23 deficiencies at issue, the Court finds that further leave to amend is not warranted. Lopez v. Smith, 203
24 F.3d 1122, 1130 (9th Cir. 2000); Noll v. Carlson, 809 F.2d 1446-1449 (9th Cir. 1987).

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Accordingly, it is HEREBY ORDERED that:

1. The instant action is dismissed, with prejudice, for failure to state a cognizable claim for relief; and
2. The Clerk of Court is directed to enter judgment.

IT IS SO ORDERED.

Dated: September 8, 2017


UNITED STATES MAGISTRATE JUDGE