

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TIANTE DION SCOTT,
Plaintiff,
VS.
BEREGOVSKAY, et al.,
Defendants.

1:17-cv-01146-AWI-GSA-PC

SCREENING ORDER

**ORDER DISMISSING COMPLAINT FOR
VIOLATION OF RULE 8(a), WITH LEAVE
TO AMEND
(ECF No. 1.)**

**THIRTY-DAY DEADLINE FOR
PLAINTIFF TO FILE AMENDED
COMPLAINT NOT EXCEEDING 25
PAGES**

**ORDER FOR CLERK TO SEND
PLAINTIFF A CIVIL COMPLAINT FORM**

I. BACKGROUND

Tianté Dion Scott (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis with this civil rights action pursuant to 42 U.S.C. § 1983. On June 19, 2017, Plaintiff filed the Complaint commencing this action at the United States District Court for the Northern District of California. (ECF No. 1.) On August 24, 2017, the case was transferred to this court. (ECF No. 6.)

Plaintiff's Complaint is now before the court for screening

1 **II. SCREENING REQUIREMENT**

2 The court is required to screen complaints brought by prisoners seeking relief against a
3 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
4 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
5 legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or
6 that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C.
7 § 1915A(b)(1),(2). “Notwithstanding any filing fee, or any portion thereof, that may have been
8 paid, the court shall dismiss the case at any time if the court determines that the action or
9 appeal fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

10 **III. SUMMARY OF FIRST AMENDED COMPLAINT**

11 Plaintiff is presently incarcerated at Pelican Bay State Prison in Crescent City,
12 California. The events at issue in the Complaint allegedly occurred at North Kern State Prison
13 in Delano, California, when Plaintiff was incarcerated there in the custody of the California
14 Department of Corrections and Rehabilitation. Plaintiff names as defendants Olga
15 Beregovskay, M.D.; A Shittu, M.D.; Ndukwe N. Odeluga, M.D.; J. Lewis (Deputy Director,
16 Policy and Risk Management Services for California Correctional Health Care Services); R.
17 Robles, M.D.; L. Krzysiak, M.D., S.H. Banayan, M.D.; D. Gines, M.D.; Karen Jose, LVN; T.
18 Guhl, RN; Gabriel, RN; C. Agbasi, LVN; Armendarez, RN; Oyeniyi, LVN; and S. Garza, SRN
19 II (collectively, “Defendants”).

20 Plaintiff’s Complaint is 80 pages in length, with an additional 137 pages of attached
21 exhibits. He seeks monetary damages and injunctive relief.

22 **IV. PLAINTIFF’S CLAIMS**

23 The Civil Rights Act under which this action was filed provides:

24 Every person who, under color of any statute, ordinance, regulation, custom, or
25 usage, of any State or Territory or the District of Columbia, subjects, or causes
26 to be subjected, any citizen of the United States or other person within the
27 jurisdiction thereof to the deprivation of any rights, privileges, or immunities
28 secured by the Constitution and laws, shall be liable to the party injured in an
action at law, suit in equity, or other proper proceeding for redress

42 U.S.C. § 1983.

1 “[Section] 1983 ‘is not itself a source of substantive rights,’ but merely provides ‘a
2 method for vindicating federal rights elsewhere conferred.’” Graham v. Connor, 490 U.S. 386,
3 393-94 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n.3 (1979)); see also Chapman
4 v. Houston Welfare Rights Org., 441 U.S. 600, 618 (1979); Hall v. City of Los Angeles, 697
5 F.3d 1059, 1068 (9th Cir. 2012); Crowley v. Nevada, 678 F.3d 730, 734 (9th Cir. 2012);
6 Anderson v. Warner, 451 F.3d 1063, 1067 (9th Cir. 2006). “To the extent that the violation of
7 a state law amounts to the deprivation of a state-created interest that reaches beyond that
8 guaranteed by the federal Constitution, Section 1983 offers no redress.” Id.

9 To state a claim under § 1983, a plaintiff must allege that (1) the defendant acted under
10 color of state law and (2) the defendant deprived him or her of rights secured by the
11 Constitution or federal law. Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
12 2006); see also Marsh v. Cnty. of San Diego, 680 F.3d 1148, 1158 (9th Cir. 2012) (discussing
13 “under color of state law”). A person deprives another of a constitutional right, “within the
14 meaning of § 1983, ‘if he does an affirmative act, participates in another’s affirmative act, or
15 omits to perform an act which he is legally required to do that causes the deprivation of which
16 complaint is made.’” Preschooler II v. Clark Cnty. Sch. Bd. of Trs., 479 F.3d 1175, 1183 (9th
17 Cir. 2007) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)). “The requisite
18 causal connection may be established when an official sets in motion a ‘series of acts by others
19 which the actor knows or reasonably should know would cause others to inflict’ constitutional
20 harms.” Preschooler II, 479 F.3d at 1183 (quoting Johnson, 588 F.2d at 743). This standard of
21 causation “closely resembles the standard ‘foreseeability’ formulation of proximate cause.”
22 Arnold v. Int’l Bus. Mach. Corp., 637 F.2d 1350, 1355 (9th Cir. 1981); see also Harper v. City
23 of Los Angeles, 533 F.3d 1010, 1026 (9th Cir. 2008).

24 Plaintiff claims that his rights to adequate medical care under the Eighth Amendment
25 were violated by Defendants.

26 **Rule 8(a) of the Federal Rules of Civil Procedure**

27 Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited
28 exceptions, none of which apply to § 1983 actions. Swierkeiwicz v. Sorema, N.A., 534 U.S.

1 506, 512 (2002). Under federal notice pleading, a complaint is required to contain “a short and
2 plain statement of the claim showing that the pleader is entitled to relief” Fed. R. Civ. P.
3 8(a)(2). “Such a statement must simply give defendant fair notice of what the plaintiff’s claim
4 is and the grounds upon which it rests.” Swierkewicz, 534 U.S. at 512. Detailed factual
5 allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action,
6 supported by mere conclusory statements, do not suffice.” Ashcroft v. Iqbal, 129 S.Ct. 1937,
7 1949 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-
8 65 (2007)). While a plaintiff’s allegations are taken as true, courts “are not required to indulge
9 unwarranted inferences.” Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
10 (internal quotation marks and citation omitted). To state a viable claim for relief, Plaintiff must
11 set forth sufficient factual allegations sufficient to state a plausible claim for relief. Iqbal, 129
12 S.Ct. at 1949-50; Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). The mere
13 possibility of misconduct falls short of meeting this plausibility standard. Id.

14 Plaintiff’s Complaint is 80 pages long, with an additional 137 pages of exhibits
15 attached. The Complaint fails to comport with Rule 8(a)’s requirement for “a short and plain
16 statement of the claim showing that the pleader is entitled to relief.” Plaintiff’s lengthy
17 narrative does not clearly or succinctly allege facts against the named Defendants. Twenty-five
18 pages is more than sufficient for Plaintiff to identify his claims and set forth specific facts in
19 support of those claims. Plaintiff’s Complaint shall be dismissed for violation of Rule 8(a),
20 with leave to file an amended complaint not exceeding twenty-five pages in length.

21 In the amended complaint, Plaintiff should include only those facts needed to state his
22 claims against each defendant, and there is no need for legal citations, arguments, or
23 hypothetical examples. As for the request for relief, Plaintiff does not need to specify the
24 damages and injunctive relief sought from *each* of the 15 defendants. Plaintiff should not
25 include evidentiary matter. Exhibits are permissible, Fed. R. Civ. P. 10(c), but they are not
26 necessary in the federal system of notice pleading, Fed. R. Civ. P. 8(a). The court strongly
27 suggests to Plaintiff that they should not be submitted where (1) they serve only to confuse the
28 record and burden the court, or (2) they are intended as future evidence. If this action reaches a

1 juncture at which the submission of evidence is appropriate and necessary (e.g., summary
2 judgment or trial), Plaintiff will have the opportunity at that time to submit his evidence.

3 **V. CONCLUSION AND ORDER**

4 The court finds that Plaintiff's Complaint violates Rule 8(a) of the Federal Rules of
5 Civil Procedure. The court will dismiss the Complaint and give Plaintiff leave to file a First
6 Amended Complaint not exceeding 25 pages.

7 Under Rule 15(a) of the Federal Rules of Civil Procedure, “[t]he court should freely
8 give leave to amend when justice so requires.” Accordingly, the court will provide Plaintiff an
9 opportunity to file an amended complaint not exceeding 25 pages. Lopez v. Smith, 203 F.3d
10 1122, 1126-30 (9th Cir. 2000). Plaintiff is granted leave to file the First Amended Complaint
11 within thirty days.

12 The First Amended Complaint must allege facts showing what each named defendant
13 did that led to the deprivation of Plaintiff's constitutional rights. Fed. R. Civ. P. 8(a); Iqbal,
14 556 U.S. at 678; Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff must
15 demonstrate that each defendant *personally* participated in the deprivation of his rights by their
16 actions. Id. at 676-77 (emphasis added).

17 Plaintiff should note that although he has been given the opportunity to amend, it is not
18 for the purpose of changing the nature of this suit or adding unrelated claims. George v. Smith,
19 507 F.3d 605, 607 (no “buckshot” complaints). Plaintiff is also advised that he has not been
20 granted leave to include allegations of events occurring after the initiation of this lawsuit on
21 June 19, 2017.

22 Plaintiff is advised that an amended complaint supercedes the original complaint, Lacey
23 v. Maricopa County, 693 F.3d 896, 907 n.1 (9th Cir. 2012) (*en banc*), and it must be complete
24 in itself without reference to the prior or superceded pleading, Local Rule 220. Therefore, in an
25 amended complaint, as in an original complaint, each claim and the involvement of each
26 defendant must be sufficiently alleged. The amended complaint should be clearly and boldly
27 titled “First Amended Complaint,” refer to the appropriate case number, and be an original
28 signed under penalty of perjury.

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

1. Plaintiff's Complaint is dismissed for violation of Rule 8(a), with leave to amend;
2. The Clerk's Office shall send Plaintiff a civil rights complaint form;
3. Plaintiff is granted leave to file a First Amended Complaint not exceeding 25 pages, within **thirty (30) days** from the date of service of this order;
4. Plaintiff shall caption the amended complaint "First Amended Complaint" and refer to the case number 1:17-cv-01146-GSA-PC; and
5. If Plaintiff fails to file a First Amended Complaint in compliance with this order within thirty days, this case may be dismissed for failure to comply with a court order.

IT IS SO ORDERED.

Dated: September 6, 2017

/s/ Gary S. Austin

UNITED STATES MAGISTRATE JUDGE