

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Luis Villegas, Case No. 1:17-cv-01326-MJS (PC)

**ORDER DISMISSING FIRST AMENDED
COMPLAINT WITH LEAVE TO AMEND**

(ECF No. 7)

THIRTY DAY DEADLINE

Luis Villegas,
Plaintiff,
v.
C.C.H.C.S., et al.,
Defendants.

Plaintiff proceeds pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff's original complaint (ECF No. 1) was stricken because it was submitted unsigned. (ECF No. 6.) Plaintiff complied with the Court's Order to file a signed complaint within thirty days. (ECF No. 7.) Plaintiff's October 23, 2017 complaint is before the Court for screening. (ECF No. 7.)

I. Screening Requirement

The Court is required to screen complaints brought by inmates seeking relief against a governmental entity or an 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 upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2). “Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim upon

1 which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

2 **II. Pleading Standard**

3 A complaint must contain “a short and plain statement of the claim showing that
4 the pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations
5 are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported
6 by mere conclusory statements, do not suffice,” Ashcroft v. Iqbal, 556 U.S. 662, 678
7 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)), and courts “are
8 not required to indulge unwarranted inferences,” Doe I v. Wal-Mart Stores, Inc., 572 F.3d
9 677, 681 (9th Cir. 2009) (internal quotation marks and citation omitted). While factual
10 allegations are accepted as true, legal conclusions are not. Iqbal, 556 U.S. at 678.

11 Prisoners may bring § 1983 claims against individuals acting “under color of state
12 law.” See 42 U.S.C. § 1983, 28 U.S.C. § 1915(e) (2)(B)(ii). Under § 1983, Plaintiff must
13 demonstrate that each defendant personally participated in the deprivation of his rights.
14 Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). This requires the presentation of
15 factual allegations sufficient to state a plausible claim for relief. Iqbal, 556 U.S. at 678-79;
16 Moss v. U.S. Secret Service, 572 F.3d 962, 969 (9th Cir. 2009). Prisoners proceeding
17 pro se in civil rights actions are entitled to have their pleadings liberally construed and to
18 have any doubt resolved in their favor, Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
19 (citations omitted), but nevertheless, the mere possibility of misconduct falls short of
20 meeting the plausibility standard, Iqbal, 556 U.S. at 678; Moss, 572 F.3d at 969.

21 **III. Plaintiff’s Allegations**

22 Plaintiff is currently incarcerated at California Substance Abuse Treatment Facility
23 (“CSATF”), in Corcoran, California, where his claims arose. He brings this action against
24 California Correctional Health Care Services (“CCHCS”); C. Cyer, CEO at CSATF; D.
25 Roberts, a registered nurse at CSATF; J. Lewis, Deputy Director of CCHCS; John Does
26 1, 2, and 3, the doctors who examined Plaintiff at CSATF; and E. Madina, a correctional
27 officer at CSATF.

28

1 Plaintiff's allegations in the October 23, 2017 complaint (ECF No. 7) are
2 summarized as follows:

3 Five years before filing his complaint, Plaintiff was diagnosed with torn cartilage in
4 his knee, a torn rotator cuff, and tendinitis in his shoulders, knees, and elbows. The
5 symptoms from these conditions were not so bad as to interfere with Plaintiff's daily life,
6 but they are not self-correcting (and apparently they are progressively worsening), so on
7 January 3, 2017, Plaintiff sought follow up treatment.

8 During this follow up, Plaintiff was given only a cursory examination and
9 rudimentary treatment. Medical staff did not review medical records or reports of his prior
10 rotator cuff surgery. They denied his request for MRI of his shoulder, knees, and elbows.
11 These medical problems have now worsened to the point that Plaintiff is in constant pain
12 and surgery is the only solution

13 Additionally, because he filed a grievance about his medical treatment, he was
14 retaliated against by being moved to a top bunk. When he refused to move, prison staff
15 issued a rules violation report ("RVR").

16 Plaintiff asserts three claims:

17 (1) "Cruel and unusual punishment, medical malpractice, equal protection, due
18 process of law" (ECF No. 7 at 4);

19 (2) Retaliation for being moved to a top bunk after he filed a medical grievance
20 and then being issued an RVR when he refused to move (Id. at 5-6); and

21 (3) Medical Malpractice or deliberate indifference to a serious medical need (Id.
22 at 7).

23 **IV. Discussion**

24 **A. Claims 1 and 3**

25 Plaintiff's first and third claims appear to be identical, but provide a different level
26 of factual detail and different phrasing of similar legal concepts. For the reasons outlined
27 below, these claims will be dismissed for failure to state a cognizable claim; however,
28 Plaintiff may file a second amended complaint correcting and clarifying the issues

1 identified.

2 **1. Factual Basis**

3 The factual bases for the first and third claims are identical, except that Plaintiff
4 provides greater detail of his medical treatment and names specific Defendants in the
5 third claim.

6 In both claims, Plaintiff asserts that he has medical problems with his knees,
7 shoulder, and elbows and that recent medical treatment was cursory and rudimentary.
8 (ECF No. 7 at 4, 7.) However, in claim one, Plaintiff provides a more detailed explanation
9 of his medical history (i.e., that the medical issues date back at least five years), and in
10 claim three, he provides a more detailed explanation of the treatment denied. (*Id.*)
11 Furthermore, in claim one, Plaintiff refers generally only to “defendants” as a group
12 without specifying who took what action (or non-action), while in claim three, he identifies
13 Defendants Cyer and Lewis as the ones responsible for the violation of his rights.

14 As the Court explains below, claims one and three have similar legal bases, but it
15 is not clear what Plaintiff is claiming in each instance.

16 **2. Legal Standards**

17 It appears to the Court that claim one seeks to allege “deliberate indifference to
18 serious medical need” claim brought under the Eighth Amendment which prohibits “cruel
19 and unusual punishment.” However, Plaintiff includes also “medical malpractice, equal
20 protection, due process of law” in his statement of the constitutional or other federal right
21 violated. (ECF No. 7 at 4.) Claim three alleges violation of the Eighth, Fifth, and
22 Fourteenth Amendments, plus medical malpractice and violation of California Code of
23 Regulations title 15. (*Id.* at 7.)

24 As so pled, the Court is unable to determine precisely who Plaintiff is suing for
25 what.

26 Claims must be set forth simply, concisely and directly. Fed. R. Civ. P. 8(d)(1)
27 (“[e]ach allegation must be simple, concise and direct”); McHenry v. Renne, 84 F.3d
28 1172, 1177 (9th Cir. 1996) (“[t]he Federal Rules require that averments ‘be simple,

1 concise, and direct"); see Crawford-El v. Britton, 523 U.S. 574, 597 (1998) (reiterating
2 that "firm application of the Federal Rules of Civil Procedure is fully warranted" in prisoner
3 cases). The Court gives significant leeway to pro se plaintiffs' pleadings. Even with
4 liberal construction, however, the complaint must not force the Court and Defendant to
5 guess at what is being alleged against whom, require the Court to spend its time
6 "preparing the 'short and plain statement' which Rule 8 obligated plaintiff to submit," or
7 require the Court and Defendant to prepare lengthy outlines "to determine who is being
8 sued for what." See, also, e.g., Brazil v. U.S. Dept. of Navy, 66 F.3d 193, 199 (9th Cir.
9 1995) ("[a]lthough a pro se litigant . . . may be entitled to great leeway when the court
10 construes his pleadings, those pleadings nonetheless must meet some minimum
11 threshold in providing a defendant with notice of what it is that it allegedly did wrong"). A
12 repetitive pleading, without clear statement of which individual did what, very likely will
13 result in delaying the review required by 28 U.S.C. § 1915A and, ultimately, an order
14 dismissing Plaintiff's action pursuant to Fed. R. Civ. P. 41, for violation of these
15 instructions. McHenry, 84 F.3d at 1179.

a. Eighth Amendment

17 If Plaintiff wishes to pursue an Eighth Amendment claim arising out of medical
18 care in prison, he “must show (1) a serious medical need by demonstrating that failure to
19 treat [his] condition could result in further significant injury or the unnecessary and
20 wanton infliction of pain,” and (2) that “the defendant’s response to the need was
21 deliberately indifferent.” Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012) (citing
22 Jett v. Penner, 439 F.3d 1091, 1096 (9th Cir. 2006)).

23 “[D]eliberate indifference to serious medical needs of prisoners constitutes the
24 unnecessary and wanton infliction of pain, proscribed by the Eighth Amendment. This is
25 true whether the indifference is manifested by prison doctors in their response to the
26 prisoner’s needs or by prison guards in intentionally denying or delaying access to
27 medical care or intentionally interfering with the treatment once prescribed.” Estelle v.
28 Gamble, 429 U.S. 97, 104-05 (1976) (internal citations, punctuation and quotation marks

1 omitted). “Prison officials are deliberately indifferent to a prisoner’s serious medical needs
2 when they ‘deny, delay or intentionally interfere with medical treatment.’” Wood v.
3 Housewright, 900 F.2d 1332, 1334 (9th Cir. 1990) (quoting Hutchinson v. United States,
4 838 F.2d 390, 394 (9th Cir. 1988)).

5 “A ‘serious’ medical need exists if the failure to treat a prisoner’s condition could
6 result in further significant injury or the ‘unnecessary and wanton infliction of pain.’”
7 McGuckin v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds,
8 WMX Technologies v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc) (quoting Estelle,
9 429 U.S. at 104). Serious medical needs include “[t]he existence of an injury that a
10 reasonable doctor or patient would find important and worthy of comment or treatment;
11 the presence of a medical condition that significantly affects an individual’s daily
12 activities; [and] the existence of chronic and substantial pain.” McGuckin, 974 F.2d at
13 1059-60.

14 To prevail on a claim for deliberate indifference to serious medical needs, a
15 prisoner must demonstrate that a prison official “kn[ew] of and disregard[ed] an excessive
16 risk to inmate health or safety; the official must both be aware of the facts from which the
17 inference could be drawn that a substantial risk of serious harm exists, and he must also
18 draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994).

19 “In the Ninth Circuit, the test for deliberate indifference consists of two parts. First,
20 the plaintiff must show a serious medical need by demonstrating that failure to treat a
21 prisoner’s condition could result in further significant injury or the unnecessary and
22 wanton infliction of pain. Second, the plaintiff must show the defendant’s response to the
23 need was deliberately indifferent. This second prong . . . is satisfied by showing (a) a
24 purposeful act or failure to respond to a prisoner’s pain or possible medical need and (b)
25 harm caused by the indifference.” Jett, 439 F.3d at 1096 (internal citations, punctuation
26 and quotation marks omitted); accord, Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir.
27 2012); Lemire v. CDCR, 726 F.3d 1062, 1081 (9th Cir. 2013).

28 “The indifference to a prisoner’s medical needs must be substantial. Mere

1 'indifference,' 'negligence,' or 'medical malpractice' will not support this claim. Even gross
2 negligence is insufficient to establish deliberate indifference to serious medical needs."
3 Lemire, 726 F.3d at 1081-82 (internal citations, punctuation and quotation marks
4 omitted); accord, Cano v. Taylor, 739 F.3d 1214, 1217 (9th Cir. 2014). Moreover, "[a]
5 difference of opinion between a physician and the prisoner -- or between medical
6 professionals -- concerning what medical care is appropriate does not amount to
7 deliberate indifference." Snow v. McDaniel, 681 F.3d 978, 987 (9th Cir. 2012) (citing
8 Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir.1989)).

b. Medical Malpractice

10 A complaint of medical malpractice or that a physician has negligently diagnosed
11 or treated a medical condition does not state a valid claim under the Eighth Amendment.
12 Wilhelm v. Rotman, 680 F.3d 1113, 1122 (9th Cir. 2012.) However, if Plaintiff is pursuing
13 a state law claim for medical malpractice in addition to an Eighth Amendment claim for
14 deliberate indifference, he “must allege in the complaint: (1) defendant's legal duty of
15 care toward plaintiff; (2) defendant's breach of that duty; (3) injury to plaintiff as a result of
16 that breach-proximate or legal cause; and (4) damage to plaintiff.” Rightley v. Alexander,
17 No. C-94-20720 RMW, 1995 WL 437710, at *3 (N.D. Cal. July 13, 1995) (citing to Hoyem
18 v. Manhattan Beach School Dist., 22 Cal.3d 508, 514 (1978)); 6 B.E. Witkin, Summary of
19 California Law, Torts § 732 (9th ed.1988). “[M]edical personnel are held in both diagnosis
20 and treatment to the degree of knowledge and skill ordinarily possessed and exercised
21 by members of their profession in similar circumstances.” Hutchinson v. United States,
22 838 F.2d 390, 392-93 (9th Cir.1988) (internal citations omitted).

Furthermore, to state a tort claim against a public employee, a plaintiff must allege compliance with the Tort Claims Act. State v. Superior Court of Kings County (Bodde), 32 Cal.4th 1234, 1245 (2004); Mangold v. California Pub. Utils. Comm'n, 67 F.3d 1470, 1477 (9th Cir. 1995); Karim-Panahi v. Los Angeles Police Dept., 839 F.2d 621, 627 (9th Cir. 1988).

28 The Court notes that in the current version of the complaint, Plaintiff makes no

indication of compliance with the Tort Claims Act.

c. Equal Protection

3 The equal protection clause requires that persons who are similarly situated be
4 treated alike. City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985);
5 Shakur v. Schiriro, 514 F.3d 878, 891 (9th Cir. 2008). A plaintiff may establish an equal
6 protection claim by showing that the plaintiff was intentionally discriminated against on
7 the basis of plaintiff's membership in a protected class, Comm. Concerning Cmtys.
8 Improvement v. City of Modesto, 583 F.3d 690, 702-03 (9th Cir. 2009); Serrano v.
9 Francis, 345 F.3d 1071, 1082 (9th Cir. 2003), or that similarly situated individuals were
10 intentionally treated differently without a rational relationship to a legitimate state
11 purpose, Engquist v. Oregon Dept. of Agr., 553 U.S. 591, 601-02 (2008); Village of
12 Willowbrook v. Olech, 528 U.S. 562, 564 (2000); Lazy Y Ranch Ltd. v. Behrens, 546 F.3d
13 580, 592 (9th Cir. 2008); North Pacifica LLC v. City of Pacifica, 526 F.3d 478, 486 (9th
14 Cir. 2008).

15 The current version of the complaint makes no mention of Plaintiff being part of
16 any protected class or treated differently than any other individuals.

d. Due Process

18 The Due Process Clause protects prisoners from being deprived of property
19 without due process of law, Wolff v. McDonnell, 418 U.S. 539, 556 (1974), and prisoners
20 have a protected interest in their personal property. Hansen v. May, 502 F.2d 728, 730
21 (9th Cir. 1974). However, while an authorized, intentional deprivation of property is
22 actionable under the Due Process Clause, see Hudson v. Palmer, 468 U.S. 517, 532, n.
23 13 (1984) (citing Logan v. Zimmerman Brush Co., 455 U.S. 422 (1982)); Quick v. Jones,
24 754 F.2d 1521, 1524 (9th Cir.1985), “[a]n unauthorized intentional deprivation of property
25 by a state employee does not constitute a violation of the procedural requirements of the
26 Due Process Clause of the Fourteenth Amendment if a meaningful post-deprivation
27 remedy for the loss is available.” Hudson v. Palmer, 468 U.S. 517, 533 (1984).

28 The Due Process Clause also protects Plaintiff against the deprivation of liberty

1 without the procedural protections to which he is entitled under the law. Wilkinson v.
2 Austin, 545 U.S. 209, 221 (2005). To state a claim, Plaintiff must first identify the interest
3 at stake. Wilkinson, 545 U.S. at 221. Liberty interests may arise from the Due Process
4 Clause or from state law. Id. The Due Process Clause itself does not confer on inmates a
5 liberty interest in avoiding more adverse conditions of confinement, id. at 221–22
6 (citations and quotation marks omitted), and under state law, the existence of a liberty
7 interest created by prison regulations is determined by focusing on the nature of the
8 condition of confinement at issue, id. at 222–23 (citing Sandin v. Conner, 515 U.S. 472,
9 481–84 (1995)) (quotation marks omitted). Liberty interests created by prison regulations
10 are generally limited to freedom from restraint which imposes atypical and significant
11 hardship on the inmate in relation to the ordinary incidents of prison life. Wilkinson, 545
12 U.S. at 221 (citing Sandin, 515 U.S. at 484) (quotation marks omitted); Myron v. Terhune,
13 476 F.3d 716, 718 (9th Cir. 2007). If a protected interest is identified, the inquiry then
14 turns to what process is due. Wilkinson, 545 U.S. at 224.

15 Plaintiff makes no allegations concerning either deprivation of property or liberty.
16 When mentioning due process, Plaintiff invokes Title 15 of the California Code of
17 Regulations, but states nothing further. Plaintiff's factual allegations do not appear to
18 raise issues concerning the process afforded Plaintiff with regard to his grievances
19 submitted to the prison authorities. It seems highly unlikely that Plaintiff can state due
20 process claim based upon the allegations made in claims 1 and 3. However, Plaintiff will
21 be afforded the opportunity to make such a claim in the amended complaint if he so
22 chooses.

23 **3. Defendants**

24 In addition, Plaintiff fails to specify **who** was responsible for his injury. While the
25 complaint names as Defendants Roberts (a registered nurse) and John Does 1-3
26 (physicians), the allegations in claims one and three are directed against all medical staff
27 and do not identify these Defendants as being among those who treated Plaintiff at
28 CSATF. Under § 1983, Plaintiff must allege that each named defendant *personally*

1 participated in the deprivation of his rights. Ashcroft, 556 U.S. at 676-7; Simmons, 609
2 F.3d 1011, 1020-21 (9th Cir. 2010); Ewing v. City of Stockton, 588 F.3d 1218, 1235 (9th
3 Cir. 2009); Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). Plaintiff may not attribute
4 liability to a group of defendants, but must “set forth specific facts as to each individual
5 defendant’s” deprivation of his rights. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988);
6 see also Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

7 Furthermore, Plaintiff names the CEO of CSATF and Deputy Director of CCHCS
8 as Defendants. As with all other Defendants (aside from Defendant Madina who is
9 specifically named in claim 2, discussed below), Plaintiff makes no specific allegations
10 against these Defendants. It appears he may be naming them just because they
11 supervised medical staff without having taken or allowed any act in violation of Plaintiff’s
12 rights.

13 Liability may not be imposed on supervisory personnel under the theory of
14 *respondeat superior*, as each defendant is only liable for his or her own misconduct.
15 Iqbal, 556 U.S. at 676-77; Ewing, 588 F.3d at 1235. Supervisors may only be held liable if
16 they “participated in or directed the violations, or knew of the violations and failed to act to
17 prevent them.” Lemire v. Cal. Dept. of Corrections & Rehabilitation, 726 F.3d 1062, 1074-
18 75 (9th Cir. 2013).

19 If Plaintiff files a second amended complaint, he must specify which Defendants
20 committed which acts and clarify the legal basis for each claim.

21 **B. Claim 2**

22 In his second claim, Plaintiff alleges that Defendant Madina retaliated against him
23 for filing a grievance about medical care. (ECF No. 7 at 6.) Specifically, he alleges that,
24 on August 23, 2017, Defendant Madina announced to Plaintiff that he was being moved
25 to a top bunk days after Plaintiff’s accommodation chrono for a lower bunk expired. (Id.)
26 Plaintiff alleges that prison staff, including Defendant Madina, were aware of the
27 grievance he filed on January 6, 2017 concerning the medical issues alleged in claims 1
28 and 3, and that Defendant Madina’s actions could be “nothing but retaliation.” (Id.)

16 Plaintiff has sufficiently pled that he engaged in protected activity in filing an
17 inmate grievance, that there was a causal connection between the conduct and
18 Defendant's action, and that he was harmed by the issuance of an RVR when he refused
19 to move.

20 However, Plaintiff's assertions do not describe an "adverse action" or an action
21 that did not advance legitimate penological goals. Plaintiff alleges that his medical
22 accommodation chrono for a lower bunk expired days before the move. (ECF No. 7 at 6.)
23 Thus, Defendant Madina's moving of Plaintiff from a lower bunk would appear to be a
24 justifiable advancement of legitimate penological goals and not adverse to Plaintiff since
25 he was no longer medically required to be placed in a lower bunk.

26 For all the foregoing reasons, Plaintiff's claims will be dismissed. However, the
27 Court will provide Plaintiff an opportunity to cure the deficiencies identified above and
28 amend the complaint to state a claim for retaliation.

1 **V. Conclusion**

2 Accordingly, IT IS HEREBY ORDERED that:

- 3 1. Plaintiff's first amended complaint (ECF No.71) is **DISMISSED** with leave to
4 amend;
- 5 3. The Clerk's Office shall send Plaintiff a blank complaint form along with a
6 copy of the amended complaint filed October 23, 2017;
- 7 4. Within **thirty (30) days** from the date of service of this order, Plaintiff must
8 either file a second amended complaint curing the deficiencies identified by
9 the Court in this order or a notice of voluntary dismissal;
- 10 5. If Plaintiff fails to comply with this order, the Court will recommend that this
11 action be dismissed, without prejudice, for failure to prosecute and failure to
12 obey a court order.

13 IT IS SO ORDERED.

15 Dated: November 16, 2017

16 /s/ *Michael J. Seng*
17 UNITED STATES MAGISTRATE JUDGE

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