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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES T. RODGERS,

Plaintiff,

No. CIV S-09-1367 EFB P

vs.

PLACER COUNTY SHERIFF'S
DEPARTMENT, et al.,

Defendants.

ORDER

_____ /
Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. On January 5, 2010, the court granted plaintiff the opportunity to proceed on the claims raised in his amended complaint against defendants Sgt. Gutierrez and the Placer County Sheriff's Department, or to file a second amended complaint attempting to also state a claim based on an alleged five day delay in receiving medical care. Dckt. No. 22. The court advised plaintiff that any amended complaint must be *complete in itself without reference to any prior pleading*, and that once plaintiff files an amended complaint, the prior pleading is superceded. *Id.* (citing Local Rule 220; *Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967)). On February 1, 2010, plaintiff filed a second amended complaint, which was not complete in itself without reference to any prior pleading, as plaintiff omitted allegations against defendants Sgt. Gutierrez and the Placer County Sheriff's Department. Dckt. No. 25. On June 30, 2010, the court informed

1 plaintiff that if he wished to pursue all of his claims in this action, meaning those against Sgt.
2 Gutierrez and the Placer County Sheriff's Department as well as those based on the alleged delay
3 in medical care, he must file a third amended complaint that includes allegations in support of all
4 such claims, without referring to any of plaintiff's earlier filed complaints in this action. Dckt.
5 No. 27. The time for filing an amended complaint has passed, and plaintiff has not filed an
6 amended complaint or otherwise responded to the court's order. Accordingly, the court will
7 screen the February 1, 2010 second amended complaint.

8 Pursuant to 28 U.S.C. § 1915A, the court shall review "a complaint in a civil action in
9 which a prisoner seeks redress from a governmental entity or officer or employee of a
10 governmental entity." 28 U.S.C. § 1915A(a). "On review, the court shall identify cognizable
11 claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous,
12 malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief
13 from a defendant who is immune from such relief." *Id.* § 1915A(b).

14 A district court must construe a pro se pleading "liberally" to determine if it states a
15 claim and, prior to dismissal, tell a plaintiff of deficiencies in his complaint and give plaintiff an
16 opportunity to cure them. *See Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000). While
17 detailed factual allegations are not required, "[t]hreadbare recitals of the elements of a cause of
18 action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 129 S.Ct.
19 1937, 1949 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff
20 must set forth "sufficient factual matter, accepted as true, to 'state a claim to relief that is
21 plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570).

22 A claim has facial plausibility when the plaintiff pleads factual content that allows
23 the court to draw the reasonable inference that the defendant is liable for the
24 misconduct alleged. The plausibility standard is not akin to a "probability
25 requirement," but it asks for more than a sheer possibility that a defendant has
acted unlawfully. Where a complaint pleads facts that are merely consistent with
a defendant's liability, it stops short of the line between possibility and
plausibility of entitlement to relief.

26 *Id.* (citations and quotation marks omitted). Although legal conclusions can provide the

1 framework of a complaint, they must be supported by factual allegations, and are not entitled to
2 the assumption of truth. *Id.* at 1950.

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

4 Every person who, under color of [state law] . . . subjects, or causes to be
5 subjected, any citizen of the United States . . . to the deprivation of any rights,
6 privileges, or immunities secured by the Constitution . . . shall be liable to the
party injured in an action at law, suit in equity, or other proper proceeding for
redress

7 42 U.S.C. § 1983. An individual defendant is not liable on a civil rights claim unless the facts
8 establish the defendant’s personal involvement in the constitutional deprivation or a causal
9 connection between the defendant’s wrongful conduct and the alleged constitutional deprivation.
10 *See Hansen v. Black*, 885 F.2d 642, 646 (9th Cir. 1989); *Johnson v. Duffy*, 588 F.2d 740, 743-44
11 (9th Cir. 1978)

12 The court has reviewed plaintiff’s second amended complaint pursuant to 28 U.S.C.
13 § 1915A and finds it does not state a cognizable claim. The allegations in the second amended
14 complaint are incomplete and disjointed and they inappropriately depend upon reference to an
15 earlier filed complaint in this action. The second amended complaint includes a list of proposed
16 defendants, and discusses in conclusory terms, “plaintiff’s injury.” Plaintiff does not describe
17 his injury or otherwise explain why he needed medical attention. Nor does plaintiff include
18 specific allegations showing how defendants were personally involved in violating his rights. It
19 is plaintiff’s responsibility to allege facts to state a plausible claim for relief. *Iqbal*, 129 S. Ct. at
20 1949; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). While it appears that
21 plaintiff intends to state a claim for deliberate indifference to his medical needs, he fails to do so.
22 As plaintiff does not make any specific factual allegations with respect to his alleged injury or
23 defendants’ alleged deliberate indifference, he cannot proceed unless he cures these deficiencies
24 in an amended complaint.

25 To state a section 1983 claim for violation of the Eighth Amendment based on inadequate
26 medical care, plaintiff must allege “acts or omissions sufficiently harmful to evidence deliberate

1 indifference to serious medical needs.” *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). To prevail,
2 plaintiff must show both that his medical needs were objectively serious, and that defendant
3 possessed a sufficiently culpable state of mind. *Wilson v. Seiter*, 501 U.S. 294, 297-99 (1991);
4 *McKinney v. Anderson*, 959 F.2d 853, 854 (9th Cir. 1992). A serious medical need is one that
5 significantly affects an individual’s daily activities, an injury or condition a reasonable doctor or
6 patient would find worthy of comment or treatment, or the existence of chronic and substantial
7 pain. *See, e.g., McGuckin v. Smith*, 974 F.2d 1050, 1059-60 (9th Cir. 1992), *overruled on other*
8 *grounds by WMX Techs. v. Miller*, 104 F.2d 1133, 1136 (9th Cir.1997) (*en banc*).

9 Deliberate indifference may be shown by the denial, delay or intentional interference
10 with medical treatment or by the way in which medical care is provided. *Hutchinson v. United*
11 *States*, 838 F.2d 390, 394 (9th Cir. 1988). To act with deliberate indifference, a prison official
12 must both be aware of facts from which the inference could be drawn that a substantial risk of
13 serious harm exists, and he must also draw the inference. *Farmer v. Brennan*, 511 U.S. 825, 837
14 (1994). Thus, a defendant is liable if he knows that plaintiff faces “a substantial risk of serious
15 harm and disregards that risk by failing to take reasonable measures to abate it.” *Id.* at 847. “[I]t
16 is enough that the official acted or failed to act despite his knowledge of a substantial risk of
17 serious harm.” *Id.* at 842. A physician need not fail to treat an inmate altogether in order to
18 violate that inmate’s Eighth Amendment rights. *Ortiz v. City of Imperial*, 884 F.2d 1312, 1314
19 (9th Cir. 1989). A failure to competently treat a serious medical condition, even if some
20 treatment is prescribed, may constitute deliberate indifference in a particular case. *Id.* However,
21 it is important to differentiate common law negligence claims of malpractice from claims
22 predicated on violations of the Eight Amendment’s prohibition of cruel and unusual punishment.
23 In asserting the latter, “[m]ere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not
24 support this cause of action.” *Broughton v. Cutter Laboratories*, 622 F.2d 458, 460 (9th Cir.
25 1980) (citing *Estelle*, 429 U.S. at 105-06); *see also Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th
26 Cir. 2004). It is well established that mere differences of opinion concerning the appropriate

1 treatment cannot be the basis of an Eighth Amendment violation. *Jackson v. McIntosh*, 90 F.3d
2 330, 332 (9th Cir. 1996); *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

3 The second amended complaint fails to articulate facts demonstrating a cognizable claim
4 for relief under these standards. To proceed plaintiff must file an amended complaint.

5 Any amended complaint must adhere to the following requirements:

6 It must be complete in itself without reference to any prior pleading. E.D. Cal. Local
7 Rule 220; *see Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an amended
8 complaint, the original pleading is superseded.

9 It must show that the federal court has jurisdiction and that plaintiff's action is brought in
10 the right place, that plaintiff is entitled to relief if plaintiff's allegations are true, and must
11 contain a request for particular relief. Plaintiff must identify as a defendant only persons who
12 personally participated in a substantial way in depriving plaintiff of a federal constitutional right.
13 *Johnson*, 588 F.2d at 743 (a person subjects another to the deprivation of a constitutional right if
14 he does an act, participates in another's act or omits to perform an act he is legally required to do
15 that causes the alleged deprivation).

16 It must contain a caption including the name of the court and the names of all parties.
17 Fed. R. Civ. P. 10(a).

18 Plaintiff may join multiple claims if they are all against a single defendant. Fed. R. Civ.
19 P. 18(a). If plaintiff has more than one claim based upon separate transactions or occurrences,
20 the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b). Plaintiff may join
21 multiple claims if they are all against a single defendant. Fed. R. Civ. P. 18(a). Unrelated claims
22 against different defendants must be pursued in multiple lawsuits. "The controlling principle
23 appears in Fed. R. Civ. P. 18(a): 'A party asserting a claim . . . may join, [] as independent or as
24 alternate claims, as many claims . . . as the party has against an opposing party.' Thus multiple
25 claims against a single party are fine, but Claim A against Defendant 1 should not be joined with
26 unrelated Claim B against Defendant 2. Unrelated claims against different defendants belong in

1 different suits, not only to prevent the sort of morass [a multiple claim, multiple defendant] suit
2 produce[s], but also to ensure that prisoners pay the required filing fees-for the Prison Litigation
3 Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file
4 without prepayment of the required fees. 28 U.S.C. § 1915(g).” *George v. Smith*, 507 F.3d 605,
5 607 (7th Cir. 2007); *see also* Fed. R. Civ. P. 20(a)(2) (joinder of defendants not permitted unless
6 both commonality and same transaction requirements are satisfied). Plaintiff may not change the
7 nature of this suit by alleging new, unrelated claims in an amended complaint. *George*, 507 F.3d
8 at 607 (no “buckshot” complaints).

9 The allegations must be short and plain, simple and direct and describe the relief plaintiff
10 seeks. Fed. R. Civ. P. 8(a); *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002); *Galbraith v.*
11 *County of Santa Clara*, 307 F.3d 1119, 1125 (9th Cir. 2002). A long, rambling pleading,
12 including many defendants with unexplained, tenuous or implausible connection to the alleged
13 constitutional injury or joining a series of unrelated claims against many defendants very likely
14 will result in delaying the review required by 28 U.S.C. § 1915 and an order dismissing
15 plaintiff’s action pursuant to Rule 41 of the Federal Rules of Civil Procedure for violation of
16 these instructions.

17 Plaintiff must sign the complaint. Fed. R. Civ. P. 11(a). By signing an amended
18 complaint, plaintiff certifies he has made reasonable inquiry and has evidentiary support for his
19 allegations and that for violation of this rule the court may impose sanctions sufficient to deter
20 repetition by plaintiff or others. Fed. R. Civ. P. 11.

21 A prisoner may bring no § 1983 action until he has exhausted such administrative
22 remedies as are available to him. 42 U.S.C. § 1997e(a). The requirement is mandatory. *Booth*
23 *v. Churner*, 532 U.S. 731, 741 (2001). By signing an amended complaint plaintiff certifies his
24 claims are warranted by existing law, including the law that he exhaust administrative remedies,
25 and that for violation of this rule plaintiff risks dismissal of his entire action

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1 Accordingly, the court hereby orders that the complaint is dismissed with leave to amend
2 within 30 days. The amended complaint must bear the docket number assigned to this case and
3 be titled "Third Amended Complaint." Failure to comply with this order will result in this action
4 being dismissed. If plaintiff files an amended complaint stating a cognizable claim the court will
5 proceed with service of process by the United States Marshal.

6 Dated: October 27, 2010.

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8 EDMUND F. BRENNAN
9 UNITED STATES MAGISTRATE JUDGE
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