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

HOWARD SCOTT,

No. CIV S-10-0372-CMK-P

Plaintiff,

vs.

ORDER

MENINA, et al.,

Defendants.

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to Magistrate Judge jurisdiction pursuant to 28 U.S.C. § 636(c) and no other party has been served or appeared in the action. Pending before the court is plaintiff’s complaint (Doc. 1).

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that complaints contain a “. . . short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, concisely, and directly. See McHenry v. Renne,

1 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to Fed. R. Civ. P. 8(e)(1)). These rules are satisfied  
2 if the complaint gives the defendant fair notice of the plaintiff's claim and the grounds upon  
3 which it rests. See Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996). Because plaintiff must  
4 allege with at least some degree of particularity overt acts by specific defendants which support  
5 the claims, vague and conclusory allegations fail to satisfy this standard. Additionally, it is  
6 impossible for the court to conduct the screening required by law when the allegations are vague  
7 and conclusory.

8           Here, plaintiff makes several general allegations regarding the treatment he is  
9 receiving while incarcerated. He complains about being removed from programming, being  
10 transferred to an inappropriate facility, and not receiving the medical treatment he needs.  
11 However, his allegations are generally vague, and he fails to explain who is actually responsible  
12 for not providing the treatment he believes he needs. The lack of explicit allegations renders his  
13 complaint too vague for the court to authorize service. However, these deficiencies can be  
14 remedied, so the court sets forth the following explanations for plaintiff's future use.

15           To state a claim under 42 U.S.C. § 1983, the plaintiff must allege an actual  
16 connection or link between the actions of the named defendants and the alleged deprivations.  
17 See Monell v. Dep't of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362  
18 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the  
19 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts, or  
20 omits to perform an act which he is legally required to do that causes the deprivation of which  
21 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Vague and  
22 conclusory allegations concerning the involvement of official personnel in civil rights violations  
23 are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982). Rather, the  
24 plaintiff must set forth specific facts as to each individual defendant's causal role in the alleged  
25 constitutional deprivation. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

26           His main complaint appears to be related to the medical treatment he needs, but is

1 not receiving. The treatment a prisoner receives in prison and the conditions under which the  
2 prisoner is confined are subject to scrutiny under the Eighth Amendment, which prohibits cruel  
3 and unusual punishment. See Helling v. McKinney, 509 U.S. 25, 31 (1993); Farmer v. Brennan,  
4 511 U.S. 825, 832 (1994). The Eighth Amendment “. . . embodies broad and idealistic concepts  
5 of dignity, civilized standards, humanity, and decency.” Estelle v. Gamble, 429 U.S. 97, 102  
6 (1976). Conditions of confinement may, however, be harsh and restrictive. See Rhodes v.  
7 Chapman, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with  
8 “food, clothing, shelter, sanitation, medical care, and personal safety.” Toussaint v. McCarthy,  
9 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only  
10 when two requirements are met: (1) objectively, the official’s act or omission must be so serious  
11 such that it results in the denial of the minimal civilized measure of life’s necessities; and (2)  
12 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of  
13 inflicting harm. See Farmer, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison  
14 official must have a “sufficiently culpable mind.” See id.

15 Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious  
16 injury or illness, gives rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at  
17 105; see also Farmer, 511 U.S. at 837. This applies to physical as well as dental and mental  
18 health needs. See Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982). An injury or illness is  
19 sufficiently serious if the failure to treat a prisoner’s condition could result in further significant  
20 injury or the “. . . unnecessary and wanton infliction of pain.” McGuckin v. Smith, 974 F.2d  
21 1050, 1059 (9th Cir. 1992); see also Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994).  
22 Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition  
23 is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily  
24 activities; and (3) whether the condition is chronic and accompanied by substantial pain. See  
25 Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc).

26 The requirement of deliberate indifference is less stringent in medical needs cases

1 than in other Eighth Amendment contexts because the responsibility to provide inmates with  
2 medical care does not generally conflict with competing penological concerns. See McGuckin,  
3 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to  
4 decisions concerning medical needs. See Hunt v. Dental Dep't, 865 F.2d 198, 200 (9th Cir.  
5 1989). The complete denial of medical attention may constitute deliberate indifference. See  
6 Toussaint v. McCarthy, 801 F.2d 1080, 1111 (9th Cir. 1986). Delay in providing medical  
7 treatment, or interference with medical treatment, may also constitute deliberate indifference.  
8 See Lopez, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also  
9 demonstrate that the delay led to further injury. See McGuckin, 974 F.2d at 1060.

10           Negligence in diagnosing or treating a medical condition does not, however, give  
11 rise to a claim under the Eighth Amendment. See Estelle, 429 U.S. at 106. Moreover, a  
12 difference of opinion between the prisoner and medical providers concerning the appropriate  
13 course of treatment does not give rise to an Eighth Amendment claim. See Jackson v. McIntosh,  
14 90 F.3d 330, 332 (9th Cir. 1996).

15           Because it is possible that the deficiencies identified in this order may be cured by  
16 amending the complaint, plaintiff is entitled to leave to amend prior to dismissal of the entire  
17 action. See Lopez v. Smith, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is  
18 informed that, as a general rule, an amended complaint supersedes the original complaint. See  
19 Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992). Thus, following dismissal with leave to  
20 amend, all claims alleged in the original complaint which are not alleged in the amended  
21 complaint are waived. See King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987). Therefore, if  
22 plaintiff amends the complaint, the court cannot refer to the prior pleading in order to make  
23 plaintiff's amended complaint complete. See Local Rule 220. An amended complaint must be  
24 complete in itself without reference to any prior pleading. See id.

25           If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the  
26 conditions complained of have resulted in a deprivation of plaintiff's constitutional rights. See

1 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how  
2 each named defendant is involved, and must set forth some affirmative link or connection  
3 between each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d  
4 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). In order to assist  
5 plaintiff, the court will provide him with a copy of a new Civil Rights Complaint form.

6 Plaintiff is warned that failure to file an amended complaint within the time  
7 provided in this order may be grounds for dismissal of this action. See Ferdik, 963 F.2d at 1260-  
8 61; see also Local Rule 110. Plaintiff is also warned that a complaint which fails to comply with  
9 Rule 8 may, in the court's discretion, be dismissed with prejudice pursuant to Rule 41(b). See  
10 Nevijel v. North Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981). Finally, plaintiff is  
11 cautioned that some of the claim raised herein appear to be duplicative of those raised in a  
12 previous action currently pending before this court, in case number 2:09cv0851-EFB. If plaintiff  
13 continues to raise such duplicative claims in his amended complaint, those claims will be  
14 dismissed. Plaintiff cannot maintain two separate actions addressing the same claims.

15 Accordingly, IT IS HEREBY ORDERED that:

- 16 1. Plaintiff's complaint is dismissed with leave to amend;
- 17 2. Plaintiff shall file a amended complaint within 30 days of the date of  
18 service of this order; and
- 19 3. The Clerk of the Court is directed to provide plaintiff a new Civil Rights  
20 Complaint form.

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22 DATED: October 17, 2011

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25 **CRAIG M. KELLISON**  
26 UNITED STATES MAGISTRATE JUDGE